No. 82-1066

In the Supreme Court of the United States

OCTOBER TERM, 1982

UNITED STATES OF AMERICA, APPELLANT

v.

HARRY PTASYNSKI, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Whether the exclusion of certain categories of Alaskan oil (26 U.S.C. 4991(b)(3)) from the coverage of the Crude Oil Windfall Profit Tax Act of 1980, violates the Uniformity Clause (Article I, Section 8, Clause 1) of the Constitution, which requires that "Duties, Imposts and Excises shall be uniform throughout the United States."

2. Assuming the answer to Question No. 1 is in the affirmative, whether the constitutionality of the remaining provisions of Title I of the Crude Oil Windfall Profit Tax Act should be upheld, pursuant to the separability clause of Section 7852(a) of the Internal Revenue Code of 1954.

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OPINION BELOW

The memorandum opinion of the district court (App. A, *infra*, 1a-11a) is not yet officially reported.

JURISDICTION

Several of the appellees brought these suits in the United States District Court for the District of Wyoming, seeking a refund of windfall profit taxes, a declaratory judgment that the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, 94 Stat. 229 et seq., is unconstitutional, and injunctive relief restraining the further assessment and collection of such taxes. On November 4, 1982, the district court entered a judgment directing that appellees recover windfall profit taxes plus interest for the taxable periods in question in unspecified amounts to be later determined by the parties (App. B, *infra*, 12a-13a). On November 12, 1982, the district court entered an amended order awarding judgment in favor of appellees in the amounts sought in the pleadings, with interest as provided by law, and also specifically setting forth the court's holding that the Crude Oil Windfall Profit Tax Act of 1980 is unconstitutional (App. C, *infra*, 14a-15a). On November 15, 1982, the district court entered a further amended judgment order limiting its rul-

ing of unconstitutionality to the provisions of Title I of the Crude Oil Windfall Profit Tax Act (26 U.S.C. (Supp. V) 4986 to 4998 and related administrative provisions) (App. D, *infra*, 16a-17a). On November 18, 1982, the United States filed a notice of appeal from all three judgment orders (App. E, *infra*, 18a). The jurisdiction of this Court rests on 28 U.S.C. 1252, which authorizes a direct appeal to this Court from an interlocutory or final judgment of a court of the United States holding an Act of Congress unconstitutional in a civil action to which the United States is a party.[1]

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Section 8, Clause 1 of the United States Constitution is set forth at Appendix F, *infra*, 19a. Title I of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. No. 96-223, 94 Stat. 229, and Section 7852(a) of the Internal Revenue Code of 1954 (26 U.S.C.) are set forth at Appendix G, *infra*, 20a-63a.

STATEMENT

A. *The Statute*

On April 2, 1980, the President signed the Crude Oil Windfall Profit Tax Act of 1980. Title I of that Act, 94 Stat. 230 *et seq.*, added Sections 4986 through 4998 to the Internal Revenue Code of 1954 (26 U.S.C. (& Supp. V)) together with related administrative provisions.[2] Under Title I of

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[1] Although the judgment order of November 4, 1982, appears to have been interlocutory insofar as it did not, by its terms, determine the amount of taxes to be refunded and it did not pass on all claims for relief, the orders of November 12 and November 15, 1982 were final judgments because they determined the specific amounts of the refunds sought in the pleadings and they contained the requisite determination that there is no just reason for delay in the entry of final judgment on the claim addressed. See Fed. R. Civ. P. 54(b). At all events, all three orders are appealable to this Court under 28 U.S.C. 1252. See *United States* v. *Clark*, 445 U.S. 23, 25-26 n.2 (1980).

[2] Title II of the Act, 94 Stat. 256 *et seq.*, provides for various energy expenditure and investment credits, unconventional fuel production

the Act, an excise tax is imposed (subject to certain exemptions) on the "windfall profit" derived from the production of domestic crude oil after February 29, 1980 (Sections 4986(a) and 4991(a)). The "windfall profit" subject to the tax is determined (on a per barrel basis) by reference to the difference between the "removal price" (generally the price at which the oil is sold at the wellhead) and an "adjusted base price" reflecting, with certain adjustments, the price at which such oil would have been sold in 1979, under varying assumptions applicable to different categories of oil (Sections 4988(a), 4988(c) and 4989)).[3] An offset, however, is allowed for state severance taxes attributable to the value of the oil in excess of its "adjusted base price" (Sections 4988(a)(2) and 4996(c)). Finally, in no event can the taxable "windfall profit" exceed 90 percent of the net income attributable to the oil (Section 4988(b)).

The rate of the tax varies between 30 percent and 70 percent of the "windfall profit" so determined. The rate depends upon the particular category of the oil (Section 4987(a)). The lowest rate (as well as the most favorable "base price" (see note 3, *supra*)) is applicable to "tier 3 oil" (which includes "newly discovered oil," "heavy oil"

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credits, energy related uses of tax-exempt bonds, and special income tax deductions for "tertiary injectant expenses." Title III of the Act, 94 Stat. 288 *et seq.* provides for energy assistance for certain low income households, and Title IV provides for a number of miscellaneous amendments to unrelated provisions of the Internal Revenue Code of 1954 and other statutes.

[3] In the case of "tier 1 oil"—*i.e.*, oil that does not qualify for the more favorable treatment accorded "tier 2" or "tier 3" oil—the base price reflects the applicable ceiling price (less 21 cents) for such oil if it had been sold as "upper tier" oil in May 1979, prior to the beginning of the phase out of the oil price controls provided for under the Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163, 89 Stat. 871. Such "upper tier" prices under the then applicable regulations averaged $13.02 per barrel. H. R. Conf. Rep. No. 96-817, 96th Cong., 2d Sess. 92 (1980). The "base price" of "tier 2" and "tier 3 oil" is equal to the price at which such oil would have been sold in December 1979 on the assumptions (1) that the price of all domestic crude oil was then uncontrolled; and (2) that the average prices for domestic crude oil were then $15.20 per barrel for "tier 2 oil" or $16.55 for "tier 3 oil". Section 4989(c) and (d).

and "incremental tertiary oil" (Sections 4991(e) and 4993)).[4] The 30 percent rate also applies to "independent producer oil" (Section 4992) that also qualifies as "tier 2 oil" (which is oil from "stripper well properties" and from economic interests in National Petroleum Reserves held by the United States (Section 4991(d)). The highest rate (as well as the least favorable "base price") applies to "tier 1 oil" (which includes all nonexempt domestic oil other than "tier 2" or "tier 3 oil" (Section 4991(c)) that does not qualify as "independent producer oil." "Tier 1 oil" that qualifies as "independent producer oil" and "tier 2 oil" that does not qualify as "independent producer oil" are taxable at the intermediate rates of 50 and 60 percent, respectively.

Section 4991(b) exempts certain classes of oil from the tax. The exempt categories are: (1) oil from "qualified governmental interest[s]" (Section 4994(a)); (2) oil from "qualified charitable interest[s]" (Section 4994(b)); (3) certain oil from interests held by or for Indian tribes or their members or produced by corporations organized under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* (Section 4994(d)); (4) "front-end tertiary oil" (Section 4994(c)); and (5) "exempt Alaskan oil" (Section 4994(e)). The latter category includes certain oil produced "(1) from a reservoir from which oil has been produced in commercial quantities through a well located north of the Arctic Circle, or (2) from a well located on the northerly side of the divide of the Alaska-Aleutian Range and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System" (Section 4994(e)). Exempt Alaskan oil does not include, however, "Sadlerochit oil," defined as "crude oil produced from the Sadlerochit reservoir in the Prudhoe Bay oilfield" (Section 4996(d)(3)).[5]

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[4] Section 602 of the Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 337, amended Section 4987(b) to reduce the applicable tax rate in the case of "newly discovered oil" from 30 percent to 15 percent, in gradual steps during the period 1982-1986.

[5] Further exemptions were provided for certain oil produced by independent producers from "stripper well propert[ies]" and specified portions of a "qualified royalty owner's qualified royalty production,"

The liability for the windfall profit tax is ultimately placed on the "producer" of the oil (Section 4986(b)), defined generally as "the holder of the economic interest with respect to the crude oil" (Section 4996(a)(1)). Section 4995, however, requires that the tax be withheld from the purchase price by the first purchaser of the oil, and further provides that the producer shall thereafter be treated as having paid the amount so withheld.[6]

B. *The Proceedings Below*

Five of the appellees are independent domestic oil producers and/or royalty holders who alleged that they were subject to the windfall profit tax.[7] They brought this action seeking: (1) a declaratory judgment that the Alaskan oil exemption from the windfall profit tax violates the Uniformity Clause of Article I, Section 8 of the Constitution, and that the tax violates the Due Process and Taking Clauses of the Fifth Amendment to the Constitution; (2) an adjudication that all such taxes were illegally assessed and collected; and (3) an order directing the government to refund all such taxes.[8]

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under amendments made to Sections 4991(b) and 4994 by Section 601 of the Economic Recovery Tax Act of 1981, (95 Stat. 336–337).

[6] The tax is deductible, for income tax purposes, by the producer under Section 164(a)(5) of the 1954 Code, as added by Section 101(b) of the Crude Oil Windfall Profit Tax Act of 1980, 94 Stat. 230. Certain holders of royalty interests, however, are entitled to treat up to $1,000 of windfall profit taxes paid with respect to their "qualified royalty production" for 1980 as a creditable or refundable "overpayment." Section 6429 of the Internal Revenue Code of 1954, as added by Section 1131 of the Omnibus Reconciliation Act of 1980, Pub. L. No. 96-499, 94 Stat. 2599. These provisions were extended to encompass "qualified royalty production" for the year 1981, and the amount allowable as a credit for that year was increased to $2,500, by Section 601 of the Economic Recovery Tax Act of 1981.

[7] The remaining appellees are 30 trade associations whose members are alleged to be oil producers or royalty holders subject to the tax, and the States of Texas and Louisiana, which were permitted to intervene in the case. See note 8, *infra*. Two other individual producers withdrew from the suit.

[8] The original complaint did not allege that any of appellees filed administrative refund claims with respect to the taxes. However, ap-

On cross motions for summary judgment, the district court concluded that the "exempt Alaskan oil" provision of the Windfall Profit Tax Act is unconstitutional under the Uniformity Clause.[9] It reasoned that "[t]he Act, on its face, says that one state, Alaska, is not subject to the same tax, at the same rate as all the other states. This is a clear violation of the constitutional requirement of uniformity" (App. A, *infra*, 7a). In so holding, the court rejected the government's argument that a rational justification for the Alaskan oil exemption supported its validity. As the court saw the matter, "[l]egitimate exemptions from tax can exist, but the exemption must be one which is not constitutionally forbidden. The Constitution has unequivocally set forth a limitation on indirect taxation—uniformity—which has been narrowly, but precisely defined by the judiciary. Distinctions based on geography are simply not allowed" (*ibid*).[10]

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pellees filed two amended complaints alleging that the producers and royalty holders had filed refund claims covering taxes paid for one of more taxable periods in calendar year 1980. The amended complaints also sought an order restraining the further assessment or collection of windfall profit taxes.

In response to the government's motion to dismiss, urging, *inter alia*, that several trade associations lacked standing to join the action as plaintiffs, the district court dismissed the associations as plaintiffs but permitted them to remain as permissive intervenors. Moreover, over the government's objection, the district court permitted the States of Texas and Louisiana to intervene in the litigation urging that the windfall profit tax violates the Tenth Amendment as well as the Uniformity Clause (App. A, *infra*, 2a).

Finally, a subsequent suit that was filed by appellee John Partridge, after filing a new refund claim covering all taxable periods in calendar year 1980, and which sought identical relief was consolidated with the original action (App. A, *infra*, 2a).

[9] The district court first ruled that the question of the constitutionality of the windfall profit tax was ripe for decision despite the fact that there had been no production of "exempt Alaskan oil" during the periods in suit (see pages 20–21 note 28, *infra*).

[10] Although its ruling that the Windfall Profit Tax Act violated the Uniformity Clause obviated the necessity for consideration of appellees' claim that the Act was barred by the Due Process Clause of the Fifth Amendment, the court concluded that "[t]he Fifth Amendment

The court further rejected the government's alternative contention that, at all events, the remaining provisions of the Act should be held valid and effective, pursuant to the "separability clause" set forth in Section 7852(a) of the Internal Revenue Code of 1954, with respect to all domestic oil production not subject to other valid exemptions. In so ruling, the court stated that it would have given more "deferential consideration" to a separability clause written into the Windfall Profit Tax Act itself, but held that Section 7852(a) of the Internal Revenue Code of 1954 (to which the windfall profit tax provisions were added) did not provide a basis for sustaining the remaining tax provisions (App. A, *infra*, 8a). In the district court's view, it was "clear that the Alaska exemption was the result of negotiations and compromise, and that the Act as it exists today would not have been passed without the invalid Alaska provision" (App. A, *infra*, 9a). Hence, it concluded that applying the "separability clause" of Section 7852(a) in such a way as to extend the tax to Alaskan oil would require the court to engage in impermissible judicial legislation (App. A, *infra*, 7a-10a).[11]

THE QUESTIONS ARE SUBSTANTIAL

In holding unconstitutional the windfall profit tax provisions added to the Internal Revenue Code of 1954 by the

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challenge to the windfall profits tax is unfounded, and without merit * * *" (App. A, *infra*, 10a).

[11] In its final amended judgment, the district court noted that its ruling was restricted to the provisions added by Title I of the Crude Oil Windfall Profit Tax Act of 1980 (26 U.S.C. (Supp. V) 4986-4998), and that it did not intend to hold the remaining provisions invalid as a result of its conclusion that the "exempt Alaskan oil" provisions could not be severed from the remaining provisions of the Act (App. D, *infra*, 16a).

The district court stayed the effect of its order (App. D, *infra*, 17a). Hence, no refunds have been issued to appellees and the windfall profit tax continues to be collected *pendente lite*. Accordingly, the government's arguments that appellees' suit for injunctive and declaratory relief is barred by the Anti-Injunction Act (26 U.S.C. (Supp. V) 7421(a)) and the tax exception to the Declaratory Judgment Act (28 U.S.C. 2201) are not before the Court.

Crude Oil Windfall Profit Tax Act of 1980, the district court has invalidated an important federal tax statute that Congress enacted as an integral part of the decontrol of domestic oil pricing. The amounts at stake are of enormous magnitude. It is estimated that the net windfall profit tax revenues from the inception of the tax through the end of the 1982 fiscal year are in excess of $26 billion, and that the net revenues during the next five years will be approximately $50 billion.[12] This Court should note probable jurisdiction in order to resolve the important constitutional questions presented and to resolve definitively the validity of the windfall profit tax provisions of the Internal Revenue Code.

1. *The Background of the Alaska Oil Exemption.* Congress enacted the windfall profit tax in response to President Carter's decision in April 1979, to begin phasing out the price controls that had been imposed on domestic oil since 1971. Oil price controls had been extended and made mandatory through May 31, 1979, by the Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163, 89 Stat. 871. That Act gave the President discretionary authority to extend such controls from May 31, 1979, through September 30, 1981. At the time domestic crude oil prices were first frozen in 1971, the price of crude oil had risen from a prevailing price of about $2.90 per barrel during the prior decade, to $3.39 per barrel. By June 1979, the uncontrolled world price for oil (including transportation costs to the United States) had risen to nearly $20 per barrel, with "spot market" prices occasionally exceeding $30 per barrel. At the same time, the average controlled price of domestic "old oil" was $5.86 per barrel, and the average controlled price of domestic "new oil" was $13.06 per barrel. President

[12] The gross revenues from the windfall profit tax through the end of fiscal year 1982 are estimated to be $50 billion. The windfall profit tax, however, is deductible for federal income tax purposes, under Section 164(a)(5) of the 1954 Code, and the windfall profit taxes attributable to economic interests owned by the United States reduce proprietary receipts. Accordingly, the net budgetary impact of the statutory provisions in question is smaller than the gross liability, but nevertheless substantial.

Carter's announcement indicated that existing controls would be phased out over a period beginning in January 1980, and ending on October 1, 1981, the effective date of expiration of the President's authority under the Energy Policy and Conservation Act of 1975. See H. R. Rep. No. 96-304, 96th Cong., 1st Sess. 4-7 (1980).[13]

The President proposed the windfall profit tax as an integral part of his plan to phase out existing price controls "[i]n order to prevent oil producers from reaping excessive profits from decontrol * * *." H.R. Doc. No. 96-107, 96th Cong., 1st Sess. 1 (1979). The President noted that the gradual removal of price controls on domestic oil would encourage exploration and production, eliminate inequities and inefficiencies under the existing system of controls, reduce United States dependency on foreign oil, and reduce the adverse balance of payments attributable to the importation of oil. He further concluded, however, that "deregulation of domestic oil prices will also provide enormous windfall gains for domestic producers of oil" as domestic oil prices rise to the prevailing world price, which had been drastically affected and could continue to be affected by actions taken by the nations participating in the "OPEC cartel" (*id.* at 1-2).

In favorably reporting on the proposed legislation, the House Ways and Means Committee similarly noted that decontrol of domestic oil prices would lead not only to "limited increases in production," but also to increases in profits to oil producers "far in excess of what most of them originally anticipated when they drilled their wells and in excess of what they might now be expected to invest in energy production." H.R. Rep. No. 96-304, *supra*, at 7. Thus, it agreed that "the additional revenues received by oil producers and royalty owners, both as a result of decontrol of oil prices and as a result of increases in world oil prices substantially prevailing in 1978, are an appropriate object of

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[13] The phase-out of price controls on domestic crude oil was actually completed by Exec. Order No. 12287, 3 C.F.R. 124, issued by President Reagan on January 28, 1981.

taxation" (*ibid.*). See also S. Rep. No. 96-394, 96th Cong., 1st Sess. 27 (1979).[14]

As we have noted (pages 3–4, *supra*), the tax that Congress ultimately adopted is imposed at varying rates, and the "windfall profit" subject to the tax is computed on varying bases, depending on the type of oil produced,[15] the nature of the producer,[16] the circumstances and manner under which the oil is produced,[17] and the time such oil was discovered and went into production.[18] While the pattern of classifications and exemptions was modified in certain respects as the proposed legislation was considered by both houses of Congress, the primary objective remained "to impose relatively high tax rates where production cannot be expected to respond very much to further increases in price and relatively low tax rates on oil whose production is likely to be responsive to price." H.R. Rep. No. 96-304, *supra*, at 7. See also S. Rep. No. 96-394, *supra*, at 7, 9.

Because of the unique climatological difficulties in oil extraction in the "North Slope" areas of Alaska, Congress recognized from the outset that oil produced in that distinct region presented a special case with respect to both the ex-

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[14] Under Section 4990, the windfall profit tax is to be phased out over a 33-month period, beginning with the later of January 1988, or the first month (not later than January, 1991) after the Secretary of the Treasury estimates that the aggregate net revenues from the tax will exceed $227.3 billion as of the end of that month. Under Section 102(a) and (b) of the Act, 94 Stat. 255, revenues collected in the interim are required to be allocated to a separate account in the Treasury for the following uses: (1) income tax reductions (60 percent); (2) low-income assistance (25 percent); and (3) energy and transportation programs (15 percent).

[15] See, e.g., Section 4991(e)(1)(B) and (e)(3), placing "heavy oil" in the favorable category of "tier 3 oil".

[16] See, e.g., Section 4987(b)(2), providing for reduced tax rates in the case of "independent producer oil" as defined by Section 4992.

[17] See, e.g., Section 4991(d)(1)(A) and (e)(1), providing that oil from "stripper well" properties and "incremental tertiary oil," as defined in Section 4993, are to be favorably treated as "tier 2 oil" and "tier 3 oil," respectively.

[18] See Section 4991(e)(1)(A), providing that "newly discovered oil" is to be favorably treated as "tier 3 oil."

istence of "windfall profits" and the determination of the appropriate tax to be imposed. Under the original Administration proposal, all oil produced from wells north of the Arctic Circle would have been exempt from the tax. H.R. 3919, 96th Cong., 1st Sess. § 2 (1979). At that time, because of the extraordinary transportation costs involved, Alaskan oil was selling for a wellhead price that was far below what eventually became the lowest "base price" for computing the taxable "windfall profit." Moreover, it was expected that the Alaskan wellhead price would remain $8 to $9 less per barrel than the uncontrolled price of oil in the lower 48 states. H.R. Rep. No. 96-304, *supra*, at 30. See also Staff of Joint Comm. on Taxation, 96th Cong., 1st Sess., *The Design of a Windfall Profit Tax* 21 (Comm. Print 1979). Accordingly, the Secretary of the Treasury expressed the view that "there are no windfalls that will be gained by the producers of Alaskan crude." *Windfall Profits Tax and Energy Trust Fund: Hearings Before the House Comm. on Ways and Means*, 96th Cong., 1st Sess. 27 (1979) ("House Hearings"). As the Secretary explained, "[i]t is easier to exempt Alaskan production from the tax than to require Alaskan producers to file tax returns solely for the purpose of showing that no liability has been incurred." *House Hearings*, *supra*, at 19.[19]

The House Committee, and the House itself, agreed to the concept of exempting "new oil" produced from wells north of the Arctic Circle, but proposed to exclude "Sadlerochit oil"—which had already gone into production—from the scope of that exemption. The bill as reported by the Senate Finance Committee would have eliminated the ne-

[19] As the Joint Committee staff study indicated, (*House Hearings*, *supra*, at 21), the world price of oil would have to rise (as it ultimately did) to at least $22 per barrel (or the tariff rate for the Trans-Alaska Pipeline would have to be correspondingly reduced) in order for the price of the Alaskan oil to rise to its then applicable ceiling price. The staff study also indicated, (*id.* at 22) that the exemption was intended "to eliminate the possibility of creating a disincentive for the production of Alaskan oil." Although it concluded that there was relatively little risk that a tax on Sadlerochit oil would discourage production, it noted that production costs for the other two known Prudhoe Bay reservoirs would be higher. *Id.* at 22.

cessity of providing such a specific exemption for new North Slope oil by proposing to exempt *all* "newly discovered oil" from the scope of the tax. S. Rep. No. 96-394, 96th Cong., 1st Sess. 2, 42-43 (1979).[20] A floor amendment proposed by the Majority Leader Senator Robert Byrd, and approved by the Senate, however, provided for the imposition of a 10 percent tax on the "windfall profit" from "newly discovered oil (other than newly discovered oil produced north of the Arctic Circle)." 125 Cong. Rec. S18564-S18568, S18863 (daily ed. Dec. 14 and 17, 1979).[21]

Thus, while the bills passed by the House and the Senate differed on a number of points, both ultimately provided for taxing "newly discovered oil," but on a favorable basis and subject to an exemption for new oil (*i.e.*, oil other than Sadlerochit oil) produced north of the Arctic Circle. The legislation thereafter took its final form in the version approved by the conferees assembled to reconcile the differences between the Senate and House bills. The conference version expanded the scope of the Alaskan exemption to include oil that might be produced in areas south of the Arctic Circle, but north of the divide of the Alaska-Aleutian mountain range, if produced from a well that is at least 75 miles from the nearest point on the Trans-Alaskan Pipeline

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[20] The Finance Committee proposal, like the provision ultimately enacted (Section 4991(e)(2)), provided that the term "newly discovered oil" has the same meaning that the term had in the June 1979 energy regulations. Under that definition, the term would encompass all oil from properties from which no crude oil was produced in calendar year 1978. See 10 C.F.R. 212.79(b), 44 Fed. Reg. 25828, 25832 (1979). As the committee noted, this definition of "newly discovered oil" would exclude Sadlerochit oil. S. Rep. No. 96-394, *supra*, at 42-43.

[21] Amendments previously offered by Senators Ribicoff and Bradley would have taxed the "windfall profit" from "newly discovered oil" at a rate of 20 percent, but also would have exempted "newly discovered oil" produced north of the Arctic Circle. 125 Cong. Rec. S18141 (daily ed. Dec. 10, 1979). Concerns with respect to the high costs and risks involved in producing North Slope oil and the disincentive to further exploration and development that would be imposed by subjecting that oil to tax had been expressed by both Senator Gravel (125 Cong. Rec. S16327 (daily ed. Nov. 8, 1979)), and Senator Stevens (125 Cong. Rec. S17422, S17478-S17480 (daily ed. Nov. 28 and 29, 1979)).

System. The conference report noted that this exemption "reflects the concern of the conferees that taxation of this production would discourage exploration and development of reservoirs in areas of extreme climatic conditions." H.R. Conf. Rep. No. 96-817, 96th Cong., 2d Sess. 103 (1980). The conference version was approved without further change, by the House by a vote of 302 to 107 (126 Cong. Rec. H1861 (daily ed. Mar. 13, 1980)) and by the Senate by a vote of 66 to 31 (126 Cong. Rec. S3151 (daily ed. Mar. 27, 1980)).

2. *The Uniformity Clause.* a. Prior to the decision below, no taxing statute had ever been held invalid on the ground that it violated the Uniformity Clause of Article I, Section 8 of the Constitution. In ruling that the windfall profit tax violated that clause, the district court concluded that "[d]istinctions based on geography are simply not allowed" (App. A, *infra*, 7a). Thus, it ruled that the "exempt Alaskan oil" provisions of Sections 4991(b)(3) and 4994(e) of the 1954 Code rendered the tax unconstitutional per se without regard to any rational justification that might exist for the exempt classification. The court's ruling rests upon a literal application of this Court's statement in the *Head Money Cases*, 112 U.S. 580, 594 (1884), that a "tax is uniform when it operates with the same force and effect in every place where the subject of it is found."

But the district court's conclusion that an excise tax is not uniform and therefore violates Article I, Section 8 where *any* geographical considerations are employed in the definition of the "subject" of or exemptions from the tax, is not supported by the actual holding of the *Head Money Cases*. Nor do the underlying purposes of the Uniformity Clause compel such a per se rule against taking any geographic considerations into account in taxing statutes. As Joseph Story explained in his classic constitutional text:

> The answer to the * * * [uniformity requirement] may be given in a few words. It was to cut off all undue preferences of one state over another, in the regulation of subjects affecting their common interests. Unless duties, imposts and excises were uniform, the grossest and most oppressive inequalities vitally af-

> fecting the pursuits and employments of the people of different states might exist.

J. Story, *Commentaries on the Constitution of the United States*, § 957, at 673 (2d ed. 1851).

In short, the Uniformity Clause was designed to prevent "combinations" that might, through the exercise of the taxing power, strike at the "vital interests" of one region. *Ibid.* See also Warren, *The Making of the Constitution* 587-588, 726-727 (2d ed. 1937). Quite the opposite happened here, where substantial congressional majorities recognized and chose to accommodate special circumstances confined to a limited geographical area. The role of judicial review in our constitutional system ordinarily would not be thought to be at its zenith where the claim is, at bottom, that the representative institutions of the federal government should be restrained from discriminating against 49 states in favor of one.

2. It is well established that the Uniformity Clause does not require what might be termed "intrinsic" uniformity. Rather, it requires no more than a geographic uniformity. See *Fernandez* v. *Wiener*, 326 U.S. 340, 359 (1945); *Brushaber* v. *Union Pac. R. R.*, 240 U.S. 1, 24 (1916); *Flint* v. *Stone Tracy Co.*, 220 U.S. 107, 175 (1911); *Knowlton* v. *Moore*, 178 U.S. 41, 83-109 (1900). See also *Florida* v. *Mellon*, 273 U.S. 12, 17 (1927). Moreover, it is likewise settled that the framers did not intend to require that "duties, imposts or excises" fall equally on the various states or their populations.[22] *Knowlton* v. *Moore*, *supra*, 178 U.S. at

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[22] By contrast, "[d]irect taxes," such as taxes on property or capitation taxes, are required to be apportioned among the states on the basis of their respective populations. Article I, Section 9, Clause 7. The Sixteenth Amendment eliminated the apportionment requirement for taxes on income that would be classified, under *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U.S. 429, on reargument, 158 U.S. 601 (1895), as "direct taxes" imposed upon the source from which the particular type of income is derived.

Two amici curiae in the court below (the American Farm Bureau Federation and the Wyoming Farm Bureau Federation) contended that the windfall profit tax was a direct tax that had to comply with the Apportionment Clause. We submit, however, that this tax is properly classified and imposed as an "excise" because it is not imposed on

104. Thus, Congress' broad power to choose the appropriate subjects of taxation encompasses the power to choose subjects that do not exist uniformly throughout the United States. *Knowlton* v. *Moore, supra,* 178 U.S. at 108; *Head Money Cases, supra,* 112 U.S. at 595. Assuming the subject chosen by Congress for taxation (or exemption) itself represents a permissible classification, the Uniformity Clause is not violated simply because that subject occurs only in a few states, or indeed only a single state. "If the classification be proper and legal, then there is the requisite uniformity in that respect" (*Nicol* v. *Ames,* 173 U.S. 509, 521 (1899)).

To be sure, where no other distinction can properly be drawn between a "subject" as it exists in different states, the Uniformity Clause may require the same treatment in each instance. See, e.g., *Fernandez v. Wiener,* 326 U.S. 340, 361 (1945); *Steward Machine Co.* v. *Davis,* 301 U.S. 548, 583 (1937); *South Carolina* v. *United States,* 199 U.S. 437, 450-451 (1905); *Heitsch* v. *Kavanagh,* 200 F.2d 178, 180 (6th Cir. 1952), cert. denied, 345 U.S. 939 (1953). But while classifications that operate only in certain areas might be subject to special scrutiny in light of the purposes of the Uniformity Clause, we submit that the inquiry cannot be separated from the question whether the tax classifications drawn by Congress are supported by rational considerations showing that they are not intended, and do not operate, either as an "undue preference" in favor of, or an "oppressive" discrimination against, the affected states.

b. Contrary to the conclusion of the court below, the holding of this Court in the *Head Money Cases* affirmatively supports the power of Congress to take geographical considerations into account in drawing legitimate tax classifications. At issue there was the constitutionality of a duty

the ownership of property per se but upon the activity of mineral extraction. See *Stanton* v. *Baltic Mining Co.,* 240 U.S. 103 (1916). At all events, since it is imposed on the income that is derived from the exploitation of economic interests in oil, the Sixteenth Amendment would permit its imposition without apportionment even assuming the tax were classified as a "direct" tax under *Pollock.* To the extent that the tax is a direct tax, the Uniformity Clause would be inapplicable.

levied against transportation companies on foreign passengers entering the United States by vessel. The Court squarely rejected the contention that the duty violated the Uniformity Clause on the ground that it did not operate with strict geographical uniformity since, by its terms, it could apply only in states having sea ports (a matter necessarily determined by considerations of their geography) and not in landlocked states where foreign passengers might arrive by railroad or other inland mode of conveyance. The Court noted that "the evil to be remedied by this legislation" did not exist on the inland borders, and that "substantial uniformity within the meaning and purpose of the Constitution" was achieved by the uniform application of the statute in those quarters in which that "evil" was found to exist. *Head Money Cases*, *supra*, 112 U.S. at 595. Thus, the Court confirmed that Congress' broad power to pick and choose appropriate subjects of taxation includes the power to choose subjects that, as a matter of geographical considerations alone, exist only in certain states, and to leave untaxed similar "subjects" existing in other states. The ultimate question, in the Court's view, was whether Congress had a reasonable basis for distinguishing between the activity that was taxed in coastal states and the similar activity that was untaxed in inland states. Similarly, in construing the analogous uniformity proviso applicable to the exercise of the bankruptcy power,[23] this Court, citing the *Head Money Cases*, concluded that the uniformity requirement "does not deny Congress power to take into account differences that exist between different parts of the country, and to fashion legislation to resolve geographically isolated problems." *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 159 (1974).

Here, as in the *Head Money Cases* and the *Regional Rail Reorganization Act Cases*, the validity of the "Alaskan oil exemption" from the windfall profit tax should not turn, as the district court concluded, simply on the fact that

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[23] Article I, Section 8, Clause 4 of the Constitution grants Congress power to establish "uniform laws on the subject of Bankruptcies throughout the United States."

Congress took geographical considerations into account, but on whether the classification based on those geographical considerations is justified in terms of the relationship of those considerations to the "subject" of the regulation or tax. Put another way, the question is whether in fashioning the tax, Congress could, on the one hand, favor generally "newly discovered oil" over "old oil" and accord the most favorable treatment to "newly discovered oil" located in certain areas (Section 4994(e)).

There can, of course, be no dispute that the exemptions here at issue are geographically defined so as to exclude oil located in all of the 50 states except portions of Alaska.[24] It is almost equally beyond dispute, however, that Congress had a rational basis for drawing such a classification. Obviously, this is not an instance in which "combinations" have drawn taxing legislation in such a way as to grant an "undue preference" in favor of their own states or to impose an "oppressive" discrimination against a minority. Rather, it is an instance of a broad-based congressional majority (including many members from other oil-producing states) granting an exemption applicable to only a portion of the oil production that might be derived in the future from certain areas that include a part of a single state.

Nor could these provisions be characterized as an "undue preference" in favor of Alaskan producers. Indeed, the benefit of the exemption falls on the owners of economic interests in that oil wherever they might reside or be incorporated. Morever, the "subject" of the tax in question is not the production of crude oil, per se, but the enjoyment of a "windfall profit" by the holders of such economic interests as a result of the removal of price controls on domestic oil and concomitant increase in the selling price of such oil to

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[24] In describing the exemption (App. A, *infra*, 4a) the district court characterized it as encompassing "certain oil found only in Alaska." In fact, it would apply to any oil, including offshore oil, that might be produced from wells located north of the Arctic Circle. Offshore oil found farther than three miles from Alaska's coastline and located on the Outer Continental Shelf is subject to the exclusive jurisdiction and control of the United States. Submerged Lands Act, 43 U.S.C. (& Supp. IV) 1301-1315; see *Maryland* v. *Louisiana*, 451 U.S. 725, 730 (1981).

the prevailing world price. The various classifications adopted with regard to this tax demonstrate that Congress' belief that the existence and extent of such "windfall profits," as well as the appropriate tax to be levied, would vary on the basis of a number of factors including the nature and type of the oil in question, the nature of the producer and the quality of his interest in the oil, and the circumstances under which the oil is produced. As the legislative history of the Act makes clear, Congress sought to draw tax classifications that would not deter producers from fully exploiting existing properties or from exploring and developing new properties. See H.R. Rep. No. 96-304, *supra*, at 7, 14; S. Rep. No. 96-394, *supra*, at 2, 6-7.[25]

The critical question therefore is whether Congress could carve out a portion of the "newly discovered oil" that might be produced in areas north of the Arctic Circle or in areas located north of the Alaska-Aleutian Range and more than 75 miles from the Trans-Alaska Pipeline System and accord such oil even more favorable treatment.[26] We submit that this exemption serves the legitimate purposes of the legislation in question, and that it does not violate the Uniformity Clause, despite the fact that it is defined in terms of the geographic location of such oil. Congress had substantial grounds for concluding that North Slope oil—particularly North Slope oil that had not yet gone into production—presented a special case, distinct from domestic oil found elsewhere (including other oil found in Alaska). First, North Slope oil that was in production at the time the tax was under consideration brought a substantially lower price at the wellhead than did equivalent oil produced in other locations of the United States because of its distance from existing markets and the necessity of transport-

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[25] Thus, "newly discovered oil" is accorded the most favorable treatment of all non-exempt categories in terms of both the "adjusted base price" and the tax rate.

[26] The definition of "newly discovered oil" would apply to all "exempt Alaskan oil" since Sadlerochit oil is excluded from the scope of that exemption and since no other oil was being produced from the areas described by Section 4994(e) prior to 1981 (see page 20, note 28, *infra*).

ing it over the newly constructed Trans-Alaska Pipeline. Indeed, the price of such North Slope oil was only about half the applicable ceiling price for such oil. H.R. Rep. No. 96-304, *supra*, at 5, 30. Moreover, Congress anticipated that the wellhead price for such oil would continue, in the foreseeable future, to be $8 to $9 less than the prevailing wellhead prices in other producing states.

Second, during the legislative debates, the point was repeatedly made, without contradiction, that because of its remote location, fragile environment, and extreme climatic conditions, the production of North Slope oil involved risks and costs that were far greater than the risks and costs of developing domestic oil properties elsewhere. See, e.g., 125 Cong. Rec. S16327 (daily ed. Nov. 8, 1979), S17422 (daily ed. Nov. 28, 1979), and S17478-S17480 (daily ed. Nov. 29, 1979) (comments of Senators Gravel and Stevens). Accordingly, Congress had substantial reason to question whether North Slope oil (other than that produced from the Sadlerochit reservoir) would, in fact, generate a "windfall profit" to the same extent as the other categories of oil subject to this tax, and to conclude that the imposition of even the relatively small windfall profit tax burden applicable in the case of other "newly discovered oil" might deter further exploration and development of North Slope properties. There was no showing either in Congress or in the court below that domestic production elsewhere would involve similar developmental costs and risks or transportation-related disparities.[27]

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[27] In addition, the Alaskan exemption was granted, in part, because of Congress' concern that a disproportionate part of the tax would otherwise fall on Alaskan oil. As Senator Stevens noted (125 Cong. Rec. S17478 (daily ed. Nov. 29, 1979)), there are no "independent producers" operating on the North Slope, nor would any of that oil (including Sadlerochit oil, which represented the largest of the known reservoirs) fall within any of the other favorably taxed categories that are found elsewhere. Thus, Senator Long indicated that the Alaskan exemption was adopted in order to make the tax apply with a greater degree of intrinsic uniformity. 126 Cong. Rec. S3056 (daily ed. Mar. 26, 1980). Though is is settled that intrinsic uniformity is not required under the Uniformity Clause, the framers of the Constitution could hardly have intended that the Uniformity Clause would impede Congress' attempts to distribute the burden of a tax more equitably among the states.

In sum, Congress should be free to draw an exemption provision based, in general terms, on the distance of newly-discovered domestic oil from existing transportation systems and markets, and on unusual development costs incurred as a result of extreme climatic and environmental conditions, even though those conditions might be found to exist only in limited areas and, perhaps, only within a single state. For example, if Congress had cast the exemption for North Slope oil in terms of a location in which the average temperature did not exceed a particular level, there could be no quarrel with such a provision under the Uniformity Clause. An exemption provision that is designed to achieve precisely the same result and that is justified by precisely the same considerations, should not be rendered unconstitutional on the ground that Congress chose to define the scope of the exemption not in terms of the underlying conditions themselves, but rather in terms of the only geographic location in which Congress had reason to believe that those conditions existed, viz., the North Slope of Alaska. The purpose of the Uniformity Clause, after all, is to provide substantive protection to the states, rather than to require mere niceties of congressional draftsmanship. Cf. *Head Money Cases*, *supra*, 112 U.S. at 594; *Regional Rail Reorganization Act Cases*, *supra*.[28]

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[28] Even on the assumption that the Uniformity Clause prohibits Congress from drawing a distinction between North Slope "newly discovered oil" and other domestic "newly discovered oil," there was still no violation of the Uniformity Clause during the periods properly in question here. It was uncontested that there was, in fact, no production of "exempt Alaskan oil" during the periods covered by any of the refund claims in issue. Characterizing the government's contention on this point as one directed to the "ripeness" of the uniformity question for decision, the district court concluded that the fact that production ultimately did occur (starting in December, 1981) rendered it appropriate to resolve that question (App. A, *infra*, 4a-5a).

But the question is not simply one of ripeness, as such, but whether, assuming the district court's reading of the Uniformity Clause is correct, the Act could be deemed to violate the Clause when, in fact, during the only periods for which the legality of the tax can be questioned in this refund suit, the taxing provisions operated with precisely the "same force and effect in every place where the subject * * * [was] found." Put another way, all oil falling into each taxable category es-

3. *The Separability Clause.* Even on the assumption that the "Alaskan oil exemption" provisions of Sections 4991(b)(3) and 4994(e) violate the Uniformity Clause, the district court erred in holding that the entire tax was thereby rendered invalid.

Section 7852(a) of the Internal Revenue Code of 1954 (App. G, *infra*, 63a), provides that "[i]f any provision of this title [26 U.S.C.], or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby." Such a provision has been included in the tax laws in terms virtually identical to those of Section 7852(a) since the Revenue Act of 1921, ch. 136, Section 1403, 42 Stat. 227. By means of this clause, Congress intended to preserve as much of the internal revenue laws as possible in the event any particular provision was held to be invalid. Assuming the "exempt Alaskan oil" provisons are barred by the Uniformity Clause, the court should have applied the "separability clause" of the tax statute to strike the invalid provisions, but to preserve the tax with respect to the windfall profits derived from all oil production (including that from within the area described in Section 4994(e)) that is not subject to other, valid exemption provisions. At a minimum, the clause should have applied so as to preserve all of the taxing provisions that are unaffected by the "exempt Alaskan oil" provisions.

The district court, however, declined to apply the "separability clause." It first ascribed significance to the fact that this clause was set forth only in the Internal Revenue Code and not in the Windfall Profit Tax Act itself. It went on to express the belief that Congress would not have enacted the windfall profit tax without the Alaskan oil exemp-

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tablished by the Act (including "newly discovered oil") was subject to tax during these periods on the same basis wherever it was found. Since the assertedly defective provisions remained wholly inoperative during the period for which the taxes in question were collected, there was not simply "substantial uniformity," but strict geographical uniformity with respect to the imposition of those taxes during those periods.

tion, and that it would be engaging in impermissible judicial legislation to apply the "separability clause" in such a way as to deny the benefit of an invalid exemption that Congress had included in the statute.

But contrary to the district court's initial rationale, there was simply no need for Congress to add an independent "separability clause" to the Windfall Profit Tax Act because those provisions were directly added to the Internal Revenue Code. The separability clause that is part of the Code is applicable to amendments to the 1954 Code as well as to provisions that were included in the original 1954 recodification of the internal revenue laws. See *Sipes* v. *United States*, 321 F.2d 174, 178 (8th Cir.), cert. denied, 375 U.S. 913 (1963) (amended provision of the 1954 Code); *United States* v. *Castro*, 413 F.2d 891, 894 (1st Cir. 1969) (original provision of the 1954 Code). Thus, once the windfall profit tax provisions of Sections 4986 through 4998 were added to the Code, each of those provisions became fully subject to the "separability clause" of Section 7852(a) to the same extent any other provision of the Code would be.

To be sure, the existence of a separability clause is not conclusive as to whether a statute will be held invalid as a whole or invalid only as to those specific provisions that directly offend a limitation imposed by the Constitution. Rather, the courts must examine the legislative intention underlying the statute in question to determine whether and to what extent the statute was intended to operate in the absence of the invalid provisions. See, e.g., *Dorchy* v. *Kansas*, 264 U.S. 286, 290 (1924). Nevertheless, the existence of such a separability clause creates, at the minimum, a strong presumption that Congress intended to save as much of a statute as possible. As this Court observed in *Carter* v. *Carter Coal Co.*, 298 U.S. 238, 312-313 (1936):

> Under the statutory rule, the presumption [of validity of the remaining portions of the statute] must be overcome by considerations which establish "the clear probability that the invalid part being eliminated the legislature would not have been satisfied with what remains," *Williams* v. *Standard Oil Co.*, 278 U.S. 235, 241 *et seq.*; or as stated in *Utah Power & L. Co.* v. *Pfost*, 286 U.S. 165, 184-185, "the clear probability

> that the legislature would not have been satisfied with the statute unless it had included the invalid part."

See also *Champlin Refining Co.* v. *Corporation Commission of Oklahoma*, 286 U.S. 210, 234 (1932).[29]

Despite the district court's assertion that the "legislative history and spirit remains somewhat of an enigma in this case" (App. A, *infra*, 9a), the legislative history indicates that Congress was specifically aware of the possibility that the Alaskan oil exemption might be challenged under the Uniformity Clause and understood that the "separability clause" set forth in Section 7852(a) of the Code would apply if that exemption were held invalid. Reservations as to the constitutionality of the tax were expressed by a number of Senators. 126 Cong. Rec. S2771, S2773-S2774 (daily ed. Mar. 20, 1980); S2825-S2828 (daily ed. Mar. 21, 1980), and S2854-S2855 (daily ed. Mar. 24, 1980) (comments and submissions of Senators Boren, Stevens, and Schmitt). In response, Senator Long, then Chairman of the Finance Committee and the floor manager of the bill in the Senate, expressed the view that the bill satisfied the requirements of the Uniformity Clause. 126 Cong. Rec. S3055-S3057 (daily ed. Mar. 26, 1980). Senator Long further noted, however, that the windfall profit tax amendments would be subject, in any event, to the "separability clause" set forth in the Internal Revenue Code itself, and stated that "it is our intention that in the event the courts should find this favorable treatment for Alaska * * * should violate the [uni]formity provision in the Constitution, that provision should be regarded as a nullity and that Alaska will pay the same 30-percent tax on new oil as everybody else." *Id.* at

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[29] Indeed, a presumption in favor of separability would be appropriate in the case of general revenue measures even without such a clause. As this Court noted in *Field* v. *Clark*, 143 U.S. 649, 696-697 (1892):

> Unless it be impossible to avoid it, a general revenue statute should never be declared inoperative in all its parts because a particular part relating to a distinct subject may be invalid. A different rule might be disastrous in the financial operations of the government, and produce the utmost confusion in the business of the entire country.

S3056.[30] No contrary views were expressed as to the applicability or the intended operation of Section 7852(a) by any proponent or opponent of this legislation in either the House or the Senate. Thus, there is solid evidence that Congress intended the separability clause of Section 7852(a) to apply.

Moreover, even apart from this explicit statement as to the applicability of the general "separability clause" provided by the Code itself, there is no basis for the district court's speculation that Congress would not have imposed the windfall profit tax in the absence of an Alaskan oil exemption. As the legislative history of these provisions makes clear, the adoption of the tax was the quid pro quo for the decontrol of domestic oil prices. There is no doubt, of course, that Congress was concerned that the general imposition of a windfall profit tax with respect to all "newly discovered oil" could have a deterrent effect on the future discovery and development of new North Slope oil. There is no indication in the legislative history, however, that this was such a critical consideration that Congress would have entirely foregone the adoption of this tax, and the $227.3 billion in revenues it was estimated to produce over a 12 to 15-year period, if it could not have provided an exemption for North Slope Alaska Oil.[31]

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[30] Senator Long also expressed the view that, in the event the Alaskan exemption were held unconstitutional and the "separability clause" employed in this manner, Congress might then attempt to devise other relief, framed in non-geographical terms, for high-risk, high-transportation cost production. *Id.* at S3055.

[31] Indeed, while the district court took pains to make clear its view that its holding would not affect any of the remaining provisions of the Act not directly related to the imposition of the windfall profit tax, what is far more questionable is whether Congress would have intended to confer the benefits of the energy conservation and production measures provided by Title II of the Act, the low-income energy assistance provided for by Title III or, indeed, possibly any of the relief measures provided by Title IV of the Act, if the revenues to be generated by Title I would not be forthcoming.

Nor, we submit, could a court be considered to be engaging in impermissible judicial legislation in holding the exemption, but not the tax itself, invalid. Indeed, such a result calls for no judicial "re-writing" of the statute, but precisely accords with the specific statutory directive provided by Section 7852(a) to give effect to all provisions that are not themselves invalid. In applying such separability clauses, the question is always one of carrying out the intentions of the Congress. There may, to be sure, be instances in which it would be inappropriate, and inconsistent with the apparent legislative intent, to deny an exemption or other preferential treatment to a group intended to be benefited thereby. But there is no strict rule againt applying a separability clause in such a way as to impose a tax on a class granted the benefit of an invalid exemption. Thus, in *Utah Power & L. Co.* v. *Pfost*, 286 U.S. 165 (1932), a state tax statute that contained a "separability clause" was challenged on the ground that an exemption provision was unconstitutional. The Court squarely rejected the contention that any defect in the exemption provisions would render the entire taxing statute invalid. In this respect, the Court stated (286 U.S. at 185):

> The primary object of the statute, under review, plainly, is to raise revenue. The exemption * * * and the provisions for carrying that exemption into effect are secondary. We find no warrant for concluding that the legislature would have been content to sacrifice an important revenue statute in the event that relief from its burdens in respect of particular individuals should become ineffective. On the contrary, it seems entirely reasonable to suppose that if the legislature had expressed itself specifically in respect of the matter, it would have declared that the tax, being the vital aim of the act, was to be preserved even though the specified exemptions should fall for lack of validity. *Field* v. *Clark*, 143 U.S. 649, 696-697; *People ex rel, Alpha P.C. Co.* v. *Knapp*, 230 N.Y. 48, 60-63; 129 N.E. 202.

The same conclusion as to the "vital aim" of the windfall profit tax, if anything, finds even stronger support in the legislative history. Therefore, even if it is assumed that the

Alaskan oil exemption is barred by the Uniformity Clause, the "separability clause" of Section 7852(a) should save the remaining provisions of the Act.[32]

[32] Even if the district court was justified in refusing to apply the separability clause of Section 7852(a) to impose the tax against holders of economic interests in North Slope oil encompassed by Section 4994(e), it should have applied the "separability clause" to preserve both that exemption and, at the same time, so much of the tax as would be uniformly applied throughout the United States with or without that exemption. This could have been accomplished by upholding the provisions imposing the tax on "old oil" and exempting all "new oil" including North Slope Alaska oil. There is no doubt that Congress would have imposed a tax upon all oil with respect to which the "windfall profit" element was most apparent even if the opponents of taxing new oil had ultimately prevailed. See *Welsh* v. *United States*, 398 U.S. 333, 361-367 (1970) (Harlan, J., concurring): "Where a statute is defective because of underinclusion there exist two remedial alternatives: a court may either declare it a nullity and order that its benefits not extend to the class that the legislature intended to benefit, or it may extend the coverage of the statute to include those who are aggrieved by exclusion. Cf. *Skinner* v. *Oklahoma*, 316 U.S. 535 (1942); *Iowa-Des Moines National Bank* v. *Bennett*, 284 U.S. 239 (1931)." There is no requirement, however, that the benefit be extended to include those who are not directly aggrieved by the improper classification.

CONCLUSION

Probable jurisdiction should be noted.
Respectfully submitted.

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DECEMBER 1982

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* The Solicitor General is disqualified in this case.

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING

No. C80-302

Filed: Nov. 4, 1982

HARRY PTASYNSKI, JOHN PARTRIDGE, BERTON W. AVERY, GOLDIE AVERY, FREDERICK S. JOHNSON, AND CALVIN PETROLEUM CORPORATION, PLAINTIFFS,

v.

UNITED STATES OF AMERICA, DEFENDANT.

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA, AMERICAN ASSOCIATION OF PETROLEUM LANDMEN, ASSOCIATION OF OILWELL SERVICING CONTRACTORS, EASTERN KANSAS OIL AND GAS ASSOCIATION, LIAISON COMMITTEE OF COOPERATING OIL AND GAS ASSOCIATIONS, ARKOMA BASIN INDEPENDENT GAS PRODUCERS ASSOCIATION, CALIFORNIA INDEPENDENT PRODUCERS ASSOCIATION, ILLINOIS OIL AND GAS ASSOCIATION, INDIANA OIL AND GAS ASSOCIATION, INDEPENDENT OIL AND GAS ASSOCIATION OF WEST VIRGINIA, INDEPENDENT PETROLEUM ASSOCIATION OF MOUNTAIN STATES, KANSAS INDEPENDENT OIL AND GAS ASSOCIATION, LOUISIANA LANDOWNERS ASSOCIATION, INC., MICHIGAN OIL AND GAS ASSOCIATION, NEW YORK STATE OIL PRODUCERS ASSOCIATION, INDEPENDENT OIL PRODUCERS TRI-STATE, INC., INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO, KENTUCKY OIL AND GAS ASSOCIATION, LOUISIANA ASSOCIATION OF INDEPENDENT PRODUCERS AND ROYALTY OWNERS, NATIONAL STRIPPER WELL ASSOCIATION, NORTH TEXAS OIL AND GAS ASSOCIATION, OHIO OIL AND GAS ASSOCIATION, PANHANDLE PRODUCERS AND ROYALTY OWNERS ASSOCIATION, PENNSYLVANIA OIL AND GAS ASSOCIATION, TENNESSEE OIL AND GAS ASSOCIATION, VIRGINIA OIL AND GAS ASSOCIATION, OKLAHOMA INDEPENDENT PETROLEUM ASSOCIATION, PENNSYLVANIA GRADE CRUDE OIL ASSOCIATION, PERMIAN BASIN PETROLEUM ASSOCIATION, TEXAS INDEPENDENT PRODUCERS AND ROYALTY OWNERS ASSOCIATION, WEST CENTRAL TEXAS OIL AND GAS ASSOCIATION, STATE OF TEXAS, AND STATE OF LOUISIANA, INTERVENORS.

No. C82-050

JOHN PARTRIDGE, PLAINTIFF,

v.

UNITED STATES OF AMERICA, DEFENDANT.

MEMORANDUM OPINION

KERR, District Judge
November 4, 1982

The question for consideration in this case is the constitutionality of the Windfall Profits Tax on Domestic Crude Oil. The tax is imposed pursuant to the Crude Oil Windfall Profits Tax Act of 1980, 26 U.S.C. § 4986 (Act), one provision of which, namely the Alaska oil exemption, 26 U.S.C. § 4994(e) provides the focus of this challenge. This Court has jurisdiction in accordance with 28 U.S.C. § 1346(a)(1) and 28 U.S.C. § 1331(a).

The plaintiffs are taxpayers, made up of independent domestic oil producers and/or royalty owners. The original filing also included the Independent Petroleum Association of America and more than thirty other associations of oil producers and royalty owners as plaintiffs. Though the association plaintiffs were dismissed pursuant to defendant's motion, they were allowed to remain in the action as permissive intervenors. Motions to intervene filed by the states of Texas and Louisiana were also granted. The American Farm Bureau Association and the Wyoming Farm Bureau Association were permitted to file an amicus curiae brief.

The original complaint has been supplemented and amended several times. Presently pending before the Court is the Second Amended and Supplemental Complaint, filed June 29, 1981, to which the defendant has responded.

A subsequent suit filed by plaintiff Partridge (C82-050) for a refund of windfall profit taxes paid in 1980 has been consolidated with the original action.

Plaintiffs, intervenors and defendant have all filed motions for summary judgment. The issue involved is one of law and there are no facts in dispute—the action is appropriate for disposition by summary judgment.

THE WINDFALL PROFIT TAX

The Act imposes an excise tax on the oil producer for the removal of domestic crude oil. The profit subject to tax is the difference between the removal price and the statutory adjusted base price (with severance and inflation adjustments). The rate of tax is determined based upon the "tier" into which the type of oil and the type of producer is categorized. A more complete picture of the categorization is presented below.

Category See § 4991	*Base Price* See § 4989	*Rate of Tax* See § 4987
Exempt:	Not Applicable	No Tax
1. Oil owned by Governments or charities		
2. Indian oil		
3. Certain Alaska oil		
4. "Front-end" oil, meaning oil the proceeds of which are used, subject to complex restrictions, to finance tertiary recovery projects.		
Tier 3:		
1. Newly discovered oil	$16.55, with various	30%
2. Heavy oil	adjustments	
3. Incremental tertiary oil		
Tier 2:		
1. Stripper oil	$15.20, with	Independents-30%
2. National Petroleum Reserve Oil	various	Others-60%
Tier 1:		
All other oil	Approximately the May 1979 ceiling price for "upper tier" oil under the price control system, or about $13	Independents-50% Others-70%

Of particular import to the question of constitutionality is the exemption of certain Alaska oil. Any crude oil (other than that produced from the Sadlerochit Reservoir) which is produced from a well north of the Arctic Circle, or from a well north of the Alaska-Aleutian Range divide which is 75 miles or more from the Trans-Alaska Pipeline System is ex-

empt from the tax. This exemption involves certain oil found only in Alaska and thus is termed "exempt Alaskan oil."

THE ISSUES

A logical presentation of the issues in this case requires that consideration first be given to the jurisdictional issue of ripeness. Defendant's allegation is that the entire issue is not ripe, at least as to these plaintiffs, because there was no oil produced to which the Alaska oil exemption could be applied during the period of time for which the refund is requested. Therefore, defendant reasons, the tax was uniformly applied during the time period involved in the suit.

Upon a finding by this Court that the issue is ripe for judicial determination, plaintiffs challenge the constitutionality of the Act on two separate theories. One theory is that the existence of the Alaska exemption makes the Act violative of the uniformity clause of the United States Constitution—art. 1, §8, cl. 1. If the Alaska oil exemption violates uniformity, plaintiffs argue, the remedy is not simply to sever the Alaska exemption, but to invalidate the entire Act.

Plaintiffs' second constitutional challenge involves two related theories based on the fifth amendment to the United States Constitution. Plaintiffs allege that the Act as a whole is unconstitutional because one, it involves confiscation or "taking" of property requiring just compensation, and two, the tax is not rationally related to the goals which the Act seeks to achieve.

RIPENESS

The refund period involved in this suit is 1980. No oil was produced in 1980 which was subject to the Alaska exemption. On the basis of these facts, defendant alleges that the tax was uniformly applied in 1980 and thus no claim for relief exists.

The absence of production in the exempt portion of Alaska during 1980 is not relevant to this Court's determination regarding the constitutionality of the Act. There is no allegation by plaintiffs that the Act is unconstitutional

simply in its application, i.e. only when production in the Alaska exemption area begins and uniformity is actually in question. The contention is that the Act is unconstitutional on its face and thus, actual production in Alaska aside, plaintiffs have been and are being subjected to an invalid tax.

A matter is not ripe for adjudication when the question involved "emphasizes a *prospective* examination of the controversy which indicates that future events may affect its structure in ways that determine its *present* justiciability . . ." TRIBE, AMERICAN CONSTITUTIONAL LAW, § 3-13 at 61 (1978). The only future event involved in this controversy is the actual exemption of Alaska oil. The lack of uniformity, in the Act itself, exists now, and has existed since the Act was passed. This alone is sufficient for a finding that the controversy before the Court is now appropriate for adjudication. However, further support for this decision can be found from the Supreme Court of the United States. Even if the question of uniformity were not actually at issue until the Alaska exemption had been effectuated, plaintiffs were subjected to a tax which was sure to become invalid. Their interest was substantial and the threatened unconstitutionality was certain to occur. "If the injury is certainly impending, that is enough." *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936); *see also Pennsylvania v. West Virginia*, 262 U.S. 553 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925). It shall be noted here, that since 1980 the Alaska exemptions have been applied, and no purpose would be served by forcing the plaintiffs to refile a challenge to this Act.

The issue is disposed of by this Court's finding that the challenge to the constitutionality of the Act is ripe for adjudication, and shall be decided on its merits.

UNIFORMITY

Article 1, § 8, cl. 1 of the United States Constitution provides:

> The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Wel-

> fare of the United States; but all Duties, Imposts and Excises *shall be uniform throughout the United States.* (Emphasis added)

The power of Congress to tax is very extensive. It has been termed "necessarily unlimited" *Austin v. The Aldermen,* 7 Wall. 694 (1868), "unfettered" *Pacific Insurance Co. v. Soule,* 7 Wall. 433 (1868), and without judicial remedy if it is merely "unwise or injurious." *Champion v. Ames,* 188 U.S. 321 (1903). Of course, constitutional guidelines must be followed, but within the framework of that limitation Congress "is supreme in its action." *Pacific Insurance Co. v. Soule, supra* at 443; *McCray v. United States,* 195 U.S. 27, 57 (1904). The Constitution itself places only one qualification on indirect taxes—the requirement that they be uniform. *License Tax Cases,* 5 Wall. 462, 471 (1866); *McCray v. United States, supra* at 56; THE CONSTITUTION OF THE UNITED STATES OF AMERICA, ANALYSIS AND INTERPRETATION, S. DOC. NO. 92-82, 92d Cong., 2d Sess. 129 (1973).

This uniformity requirement applies to all excise or indirect taxes, and has been held to be one of geographic uniformity only. *Knowlton v. Moore,* 178 U.S. 41 (1900). "The classic definition of geographic uniformity is that given in the *Head Money Cases,* 112 U.S. 580, 594 (1884) . . . 'The tax is uniform when it operates with the same force and effect in every place where the subject of it is found.'" TRIBE, *supra* at § 5-11, p. 252, n. 3.

To clarify even further, uniformity seeks to prevent discrimination among the states. That is not to say that some states will not experience a greater burden of excise tax than others. By nature, the subjects of excise tax are not evenly distributed in every state. Some states have large amounts of the subject being taxed, some have smaller amounts, and some states have none at all. An indirect tax on articles or actions so diverse in their existence is valid, *so long as* in each state where the subject of the tax *is* found, the tax is applied, and applied with equal force. *Knowlton v. Moore, supra.*

In this case, the production and removal of domestic crude oil is the subject of the tax. Crude oil is not found in

each of the fifty United States, and even in those states where it is found, it varies in quantity and availability. Production and removal do not take place in the same manner or at the same rate in every state where crude oil is known to be. Some states and their citizens will pay large amounts of windfall profits tax. Some states will pay no tax at all. However, these distinctions do not make the tax on production and removal of crude oil invalid for lack of uniformity. The Constitution only requires that in each state where crude oil is found, the production and removal of that crude oil be subject to the tax and taxed at the same rate. The windfall profits tax ignores this requirement. The Act, on its face, says that one state, Alaska, is not subject to the same tax, at the same rate as all the other states. This is a clear violation of the constitutional requirement of uniformity.

Defendant's argument that a rational justification for the exemption can validate its existence is not without some merit. Legitimate exemptions from tax can exist, but the exemption must be one which is not constitutionally forbidden. The Constitution has unequivocally set forth a limitation on indirect taxation—uniformity—which has been narrowly, but precisely defined by the judiciary. Distinctions based on geography are simply not allowed.

SEPARABILITY

The finding that the "exempt Alaskan oil" provision of the Act is unconstitutional for lack of uniformity does not necessarily dispose of the issue of the constitutionality of the Act itself. It must further be ascertained whether the invalid provision can be stricken from the Act, leaving the valid portion to be enforced separately, or whether the entire Act must fall due to the unconstitutionality of the Alaska exemption.

While several factors must be considered to reach the proper decision in each case, the test is said to be one of legislative intent. *Carter v. Carter Coal, supra;* 2 SUTHERLAND, STATUTORY CONSTRUCTION, § 44.03, p. 338 (4th ed. 1972). Unfortunately, even with an opportunity to carefully consider legislative history, it is not always a simple task to

determine with much accuracy the lawmakers' intent. Both plaintiffs and defendant have cited examples of individual statements and commentary. The most articulate of individual observations, while providing a certain amount of insight, is not necessarily indicative of the entire Congressional spirit. *American Smelting & R. Co. v. Occupational S. & H.R. Comm.*, 501 F.2d 504, 509 (8th Cir. 1974). At times, separability clauses have been used by lawmakers to signify intent or by courts as an aid in interpretation. However, it seems clear that the presence or absence of such a provision is in no way conclusive or binding on the ultimate decision of severing or requiring the entire Act to fall. *Dorchy v. Kansas*, 264 U.S. 286 (1924); *Williams v. Standard Oil Co. of Louisiana*, 278 U.S. 235 (1929); SUTHERLAND, *supra* at § 44.08, p. 349. The Internal Revenue Code, of which the windfall profits tax is a part, contains a general separability clause. 26 U.S.C. § 7852(a) provides:

> If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby.

As explicit as this provision appears, the interpretations set forth by both sides are valid. As defendant argues, it may be read to permit the invalidation of the exemption while leaving the remainder of the Act enforceable. Or as plaintiffs argue, the entire Act could be found invalid, and this provision would allow it to be stricken from the Internal Revenue Code without affecting the remainder of the title. Consequently, this Court merely notes that a separability clause does exist in the Internal Revenue Code, but that its aid in clarification of this matter is minimal and a holding can be reached without reliance on or disaffirmance of the clause. More deferential consideration would be given were a specific separability clause written into the Act itself.

With or without consideration of the separability clause, we still face the task of interpreting legislative intent. A further clue to the purpose intended by lawmakers is provided by judicial analysis. "Since no precise ... standard

may be set out ... a rule of reasonableness is invoked." SUTHERLAND, *supra* at § 44.03, p. 338 and cases cited therein; the test is whether or not the legislation would have passed with the invalid features removed. *Carter v. Carter Coal Co., supra;* legislation is invalid in its entirety on a clear showing that "the invalid part being eliminated the legislature would not have been satisfied with what remains." *Williams v. Standard Oil Co., supra* at 242. Conceding that the legislative history and spirit remains somewhat of an enigma in this case, it is however clear that the Alaska exemption was the result of negotiations and compromise, and that the Act as it exists today would not have been passed without the invalid Alaska provision. H.R. Rep. No. 304, 96th Cong., 2d Sess. 30, *reprinted in* 1980 U.S. Code Cong. & Ad. News 587, 612-13; S. Rep. No. 394, 96th Cong., 2d Sess. 35-37, *reprinted in* 1980 U.S. Code Cong. & Ad. News 410, 444-446; 125 Cong. Rec. S 18564 (daily ed.; Amendment No. 877 as modified), adopted at S 18567 (December 14, 1979); 125 Cong. Rec. S 18564, 18566, (daily ed. December 14, 1979); 125 Cong. Rec. S 18565 (daily ed. December 14, 1979).

"Some courts uphold the valid portion of a statute when the invalid portion can be shown not to have been the inducement for passage of the act. Conversely, where the invalid portion was the principal inducement for the passage of the statute, the whole statute must fail. (footnotes omitted)" SUTHERLAND, *supra* at § 44.06, p. 346. The circumstances surrounding the windfall profits tax legislation give a strong indication that the entire Act must be declared void as a result of the unconstitutional Alaska exemption. Although "principal inducement" may be attributing more weight to the Alaska exemption than it deserves, the exemption does carry sufficient import to justify a finding that its invalidation renders the entire Act void.

This Court finds yet a further basis upon which the entire Act must be struck down. Were the Alaskan exemption simply invalidated, and the balance of the Act left independently enforceable, the result would be extension of the tax to all crude oil produced in Alaska, subject of course to the categorization of the various tiers. Action of that nature

amounts to judicial legislation which is not permissible and should be avoided by courts. Under the "guise of interpretation" courts cannot alter legislative intent or usurp legislative authority, 73 Am. Jur. 2d, *Statutes*, § 197, p. 394 (1974) and cases cited therein; SUTHERLAND, *supra* at § 44.13, p. 359, and this Court will not infringe on the powers and duties of Congress. Accordingly, due to the unconstitutionality of the Alaska exemption, the Act in its entirety must fall.

THE FIFTH AMENDMENT

Having decided that the Windfall Profits Tax Act is unconstitutional because it violates uniformity, the Court need not rule on plaintiffs' second constitutional challenge, that based on the fifth amendment. However, the Court will note that such a challenge is without merit. The latitude of congressional power to tax has been previously noted, and within that power is the authority to select subjects of taxation. *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911); *McCray v. United States*, 195 U.S. 27 (1904). That a tax is too high, unwise, oppressive, burdensome, restrictive or even destructive does not provide a basis upon which the courts can void a tax invoked by Congress. *McCray v. United States, supra; Sonzinsky v. United States*, 300 U.S. 506 (1973). A tax by its very nature is destructive and burdensome.

As forceful and protective as the fifth amendment is, it does not act as a limitation on congressional power to tax granted by the United States Constitution. Even a seemingly arbitrary tax does not amount to confiscation or taking violative of due process. *Brushaber v. Union Pacific Railroad*, 240 U.S. 1 (1916); *McCray v. United States, supra*. The goal of raising revenue is a sufficient one to justify tax. *McCray v. United States, supra*. Surely no one is attempting to argue that the windfall profits tax is not a revenue raising measure. The fifth amendment challenge to the windfall profits tax is unfounded, and without merit, but unnecessary for a determination in this case.

CONCLUSION

For the above-stated reasons, this Court finds that the Crude Oil Windfall Profits Tax Act of 1980, 26 U.S.C. § 4986 et. seq. violates art. 1, § 8, cl. 1 of the United States Constitution. The invalid portion of the Act cannot be severed, and thus the entire Act must fall.

Summary judgment will be entered in accordance with this Memorandum Opinion.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

No. C80-302

No. C82-050

Filed Nov. 4, 1982

JUDGMENT

The above-entitled matter coming on regularly for hearing before the Court, taxpayer plaintiffs, intervenors and two amicus curiae appearing by and through their attorneys, Robert F. Nagel, Stephen Williams, William H. Brown, Mike Sullivan, Harold Scoggins, Mark White, Stuart Fryer, George J. Domas, Gale Norton, Richard L. Krause and Brent Kunz, and defendant appearing by and through its attorneys, Robert Livingston and Robert L. Baker, and the Court having heard the evidence and having taken said matter under advisement, and having carefully considered the pleadings, testimony and exhibits relevant and material to the matters in dispute, and the memoranda submitted by counsel in support of their respective theories of the case, and having prepared and filed herein its Memorandum Opinion, finding generally in favor of the plaintiffs and against the defendant, and being fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED that plaintiffs recover of and from defendant the amount of windfall profit taxes paid by plaintiffs in March of 1980 for C80-302, and from March through December 1980 in C82-050, in such sum as may be determined by plaintiffs and defendant with interest as provided by law; it is

FURTHER ORDERED that all proceedings in this matter be stayed until a higher court has had occasion to pass upon the correctness of the trial court's decision.

Dated this 4th day of November, 1982.

EWING T. KERR
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

No. C80-302

No. C82-050

Filed Nov. 12, 1982

AMENDED JUDGMENT

Upon the Court's own motion, the Judgment entered in this case on November 4, 1982 be, and the same is, hereby amended to read as follows:

The above-entitled matter coming on regularly for hearing before the Court, taxpayer plaintiffs, intervenors and two amicus curiae appearing by and through their attorneys, Robert F. Nagel, Stephen Williams, William H. Brown, Mike Sullivan, Harold Scoggins, Mark White, Stuart Fryer, George J. Domas, Gale Norton, Richard L. Krause and Brent Kunz, and defendant appearing by and through its attorneys, Robert Livingston and Robert L. Baker, and the Court having heard the evidence and having taken said matter under advisement, and having carefully considered the pleadings, testimony and exhibits relevant and material to the matters in dispute, and the memoranda submitted by counsel in support of their respective theories of the case, and having prepared and filed herein its Memorandum Opinion, finding generally in favor of the plaintiffs and intervenors and against the defendant, and being fully advised in the premises;

NOW, THEREFORE, IT IS ORDERED that the Windfall Profit Tax on Domestic Crude Oil, 26 U.S.C. 4986 et. seq., be, and the same is, hereby held unconstitutional; it is

Further Ordered that plaintiffs recover of and from defendant the amount of windfall profit taxes paid by plaintiffs in March of 1980 for C80-302, and from March through December 1980 in C82-050, in such sum as alleged in the Second Supplemental and Amended Complaint with interest as provided by law; it is

FURTHER ORDERED that all proceedings in this matter be stayed until a higher court has had occasion to pass upon the correctness of the trial court's decision; it is

FURTHER ORDERED that it is expressly determined that there is no just reason for delay in entry or final judgment and therefore judgment is entered accordingly.

Dated this 12th day of November, 1982.

EWING T. KERR
United States District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

No. C80-302

No. C82-050

Filed Nov. 15, 1982

AMENDED JUDGMENT

Upon the Court's own motion, the Judgment entered in this case on November 4, 1982 be, and the same is, hereby amended to read as follows:

The above-entitled matter coming on regularly for hearing before the Court, taxpayer plaintiffs, intervenors and two amicus curiae appearing by and through their attorneys, Robert F. Nagel, Stephen Williams, William H. Brown, Mike Sullivan, Harold Scoggins, Mark White, Stuart Fryer, George J. Domas, Gale Norton, Richard L. Krause and Brent Kunz, and defendant appearing by and through its attorneys, Robert Livingston and Robert L. Baker, and the Court having heard the evidence and having taken said matter under advisement, and having carefully considered the pleadings, testimony and exhibits relevant and material to the matters in dispute, and the memoranda submitted by counsel in support of their respective theories of the case, and having prepared and filed herein its Memorandum Opinion, finding generally in favor of the plaintiffs and intervenors and against the defendant, and being fully advised in the premises; it is

ORDERED that due to Plaintiffs and Intervenors challenge to only Title I of the Crude Oil Windfall Profit Tax Act of 1980 P.L. 96-223, April 2, 1980, it was intended by the Court that the Memorandum Opinion be directed only to Title I of that Act entitled Windfall Profit Tax on Domestic Crude Oil. Any reference to the "Act" or the "entire Act" was intended to be and is hereby restricted to Title I found at 26 U.S.C. §§ 4986 to 4998 inclusive; it is

FURTHER ORDERED that summary judgment be, and the same is hereby ordered in accordance with the Memorandum Opinion and the Windfall Profit Tax on Domestic Crude Oil, 26 U.S.C. §§ 4986 to 4998 inclusive, Title I of the Crude Oil Windfall Profit Tax Act of 1980 be, and the same is, hereby held unconstitutional; it is

FURTHER ORDERED that plaintiffs recover of and from defendant the amount of windfall profit taxes paid by plaintiffs in March of 1980 for C80-302, and from March through December 1980 in C82-050, in such sum as alleged in the Second Supplemental and Amended Complaint with interest as provided by law; it is

FURTHER ORDERED that all proceedings in this matter be stayed until a higher court has had occasion to pass upon the correctness of the trial court's decision; it is

FURTHER ORDERED that it is expressly determined that there is no just reason for delay in entry of final judgment and therefore judgment is entered accordingly.

Dated this 15th day of November, 1982.

EWING T. KERR

United States District Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

No. C80-302

HARRY PTASYNSKI, JOHN PARTRIDGE, BERTON W. AVERY, GOLDIE AVERY, FREDERICK S. JOHNSON AND CALVIN PETROLEUM CORPORATION, PLAINTIFFS

v.

UNITED STATES OF AMERICA, DEFENDANT

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA, ET AL., INTERVENORS

No. C82-050

JOHN PARTRIDGE, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the United States of America, the Defendant above named, hereby appeals to the Supreme Court of the United States from the judgment order entered in this action on November 4, 1982 and the amended judgment orders entered in this action on November 12, and November 15, 1982.

This appeal is taken pursuant to 28 U.S.C. Section 1252.

RICHARD ALLEN STACY
United States Attorney

APPENDIX F

Constitution of the United States:

ARTICLE I

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

* * * * *

APPENDIX G

Title I, Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96-223, 94 Stat. 229:

An Act

To impose a windfall profit tax on domestic crude oil, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF 1954 CODE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Crude Oil Windfall Profit Tax Act of 1980".

(b) AMENDMENT OF 1954 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1954.

(c) TABLE OF CONTENTS.—

* * * * *

TITLE I—WINDFALL PROFIT TAX ON DOMESTIC CRUDE OIL

SEC. 101. WINDFALL PROFIT TAX.

(a) IN GENERAL.—

(1) AMENDMENT OF SUBTITLE D.—Subtitle D (relating to miscellaneous excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 45—WINDFALL PROFIT TAX ON DOMESTIC CRUDE OIL

"Subchapter A—Imposition and Amount of Tax

"SEC. 4986. IMPOSITION OF TAX.

"(a) IMPOSITION OF TAX.—An excise tax is hereby imposed on the windfall profit from taxable crude oil removed from the premises during each taxable period.

"(b) TAX PAID BY PRODUCER.—The tax imposed by this section shall be paid by the producer of the crude oil.

"SEC. 4987. AMOUNT OF TAX.

"(a) IN GENERAL.—The amount of tax imposed by section 4986 with respect to any barrel of taxable crude oil shall be the applicable percentage of the windfall profit on such barrel.

"(b) APPLICABLE PERCENTAGE.—For purposes of subsection (a)—

"(1) GENERAL RULE FOR TIERS 1 AND 2.—The applicable percentage for tier 1 oil and tier 2 oil which is not independent producer oil is—

"Tier 1	70
"Tier 2	60

"(2) INDEPENDENT PRODUCER OIL.—The applicable percentage for independent producer oil which is tier 1 oil or tier 2 oil is—

"Tier 1	50
"Tier 2	30

"(3) TIER 3 OIL.—The applicable percentage for tier 3 oil is 30 percent.

"(c) FRACTIONAL PART OF BARREL.—In the case of a fraction of a barrel, the tax imposed by section 4986 shall

be the same fraction of the amount of such tax imposed on the whole barrel.

"SEC. 4988. WINDFALL PROFIT; REMOVAL PRICE.

"(a) GENERAL RULE.—For purposes of this chapter, the term 'windfall profit' means the excess of the removal price of the barrel of crude oil over the sum of—

"(1) the adjusted base price of such barrel, and

"(2) the amount of the severance tax adjustment with respect to such barrel provided by section 4996(c).

"(b) NET INCOME LIMITATION ON WINDFALL PROFIT.—

"(1) IN GENERAL.—The windfall profit on any barrel of crude oil shall not exceed 90 percent of the net income attributable to such barrel.

"(2) DETERMINATION OF NET INCOME.—For purposes of paragraph (1), the net income attributable to a barrel shall be determined by dividing—

"(A) the taxable income from the property for the taxable year attributable to taxable crude oil, by

"(B) the number of barrels of taxable crude oil from such property taken into account for such taxable year.

"(3) TAXABLE INCOME FROM THE PROPERTY.—For purposes of paragraph (2)—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the taxable income from the property shall be determined under section 613(a).

"(B) CERTAIN DEDUCTIONS NOT ALLOWED.—No deduction shall be allowed for—

"(i) depletion,

"(ii) the tax imposed by section 4986,

"(iii) section 263(c) costs, or

"(iv) qualified tertiary injectant expenses to which an election under subparagraph (E) applies.

"(C) TAXABLE INCOME REDUCED BY COST DEPLETION.—Taxable income shall be reduced by the cost depletion which would have been allowable for the taxable year with respect to the property if—

"(i) all—

"(I) section 263(c) costs, and

"(II) qualified tertiary injectant expenses to which an election under subparagraph (E) applies, incurred by the taxpayer have been capitalized and taken into account in computing cost depletion, and

"(ii) cost depletion had been used by the taxpayer with respect to such property for all taxable periods.

"(D) SECTION 263(c) COSTS.—For purposes of this paragraph, the term 'section 263(c) costs' means intangible drilling and development costs incurred by the taxpayer which (by reason of an election under section 263(c)) may be deducted as expenses for purposes of this title (other than this paragraph). Such term shall not include costs incurred in drilling a nonproductive well.

"(E) ELECTION TO CAPITALIZE QUALIFIED TERTIARY INJECTANT EXPENSES.—

"(i) IN GENERAL.—Any taxpayer may elect, with respect to any property, to capitalize qualified tertiary injectant expenses for purposes of this paragraph. Any such election shall apply to all qualified tertiary injectant expenses allocable to the property for which the election is made, and may be revoked only with the consent of the Secretary. Any such election shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

"(ii) QUALIFIED TERTIARY INJECTANT EXPENSES.— The term 'qualified tertiary injectant expenses' means any expense allowable as a deduction under section 193.

"(4) SPECIAL RULE FOR APPLYING PARAGRAPH (3)(C) TO CERTAIN TRANSFERS OF PROVEN OIL OR GAS PROPERTIES.—

"(A) IN GENERAL.—In the case of any proven oil or gas property transfer which (but for this subparagraph), would result in an increase in the amount determined under paragraph (3)(C) with respect to the transferee, paragraph (3)(C) shall be applied with respect to the transferee by taking into account only those amounts which would have been allowable with

respect to the transferor under paragraph (3)(C) and those costs incurred during periods after such transfer.

"(B) PROVEN OIL OR GAS PROPERTY TRANSFER.—For purposes of subparagraph (A), the term 'proven oil or gas property transfer' means any transfer (including the subleasing of a lease or the creation of a production payment which gives the transferee an economic interest in the property) after 1978 of an interest (including an interest in a partnership or trust) in any proven oil or gas property (within the meaning of section 613A(c)(9)(A)).

"(5) SPECIAL RULE WHERE THERE IS PRODUCTION PAYMENT.—For purposes of paragraph (2), if any portion of the taxable crude oil removed from the property is applied in discharge of a production payment, the gross income from such portion shall be included in the gross income from the property of both the person holding such production payment and the person holding the interest from which such production payment was created.

"(c) REMOVAL PRICE.—For purposes of this chapter—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the term 'removal price' means the amount for which the barrel is sold.

"(2) SALES BETWEEN RELATED PERSONS.—In the case of a sale between related persons (within the meaning of section 103(b)(6)(C)), the removal price shall not be less than the constructive sales price for purposes of determining gross income from the property under section 613.

"(3) OIL REMOVED FROM PREMISES BEFORE SALE.—If crude oil is removed from the premises before it is sold, the removal price shall be the constructive sales price for purposes of determining gross income from the property under section 613.

"(4) REFINING BEGUN ON PREMISES.—If the manufacture or conversion of crude oil into refined products begins before such oil is removed from the premises—

"(A) such oil shall be treated as removed on the day such manufacture or conversion begins, and

"(B) the removal price shall be the constructive sales price for purposes of determining gross income from the property under section 613.

"(5) MEANING OF TERMS.—The terms 'premises' and 'refined product' have the same meaning as when used for purposes of determining gross income from the property under section 613.

"SEC. 4989. ADJUSTED BASE PRICE.

"(a) ADJUSTED BASE PRICE DEFINED.—For purposes of this chapter, the term 'adjusted base price' means the base price for the barrel of crude oil plus an amount equal to—

"(1) such base price, multiplied by

"(2) the inflation adjustment for the calendar quarter in which the crude oil is removed from the premises.

The amount determined under the preceding sentence shall be rounded to the nearest cent.

"(b) INFLATION ADJUSTMENT.—

"(1) IN GENERAL.—For purposes of subsection (a), the inflation adjustment for any calendar quarter is the percentage by which—

"(A) the implicit price deflator for the gross national product for the second preceding calendar quarter, exceeds

"(B) such deflator for the calendar quarter ending June 30, 1979.

"(2) ADDITIONAL ADJUSTMENT FOR TIER 3 OIL.—The adjusted base price for tier 3 oil shall be determined by substituting for the implicit price deflator referred to in paragraph (1)(A) an amount equal to such deflator multiplied by 1.005 to the nth power where 'n' equals the number of calendar quarters beginning after September 1979 and before the calendar quarter in which the oil is removed from the premises.

"(3) FIRST REVISION OF PRICE DEFLATOR USED.—For purposes of paragraphs (1) and (2), the first revision of the price deflator shall be used.

"(c) BASE PRICE FOR TIER 1 OIL.—For purposes of this chapter, the base price for tier 1 oil is—

"(1) the ceiling price which would have applied to such oil under the March 1979 energy regulations if it had been produced and sold in May 1979 as upper tier oil, reduced by

"(2) 21 cents.

"(d) BASE PRICES FOR TIER 2 OIL AND TIER 3 OIL.—For purposes of this chapter—

"(1) GENERAL RULE.—Except as provided in paragraph (2), the base prices for tier 2 oil and tier 3 oil shall be prices determined pursuant to the method prescribed by the Secretary by regulations. Any method so prescribed shall be designed so as to yield, with respect to oil of any grade, quality, and field, a base price which approximates the price at which such oil would have sold in December 1979 if—

"(A) all domestic crude oil were uncontrolled, and

"(B) the average removal price for all domestic crude oil (other than Sadlerochit oil) were—

"(i) $15.20 a barrel for purposes of determining base prices for tier 2 oil, and

"(ii) $16.55 a barrel for purposes of determining base prices for tier 3 oil.

"(2) INTERIM RULE.—For months beginning before October 1980 (or such earlier date as may be provided in regulations taking effect before such earlier date), the base prices for tier 2 oil and tier 3 oil, respectively, shall be the product of—

"(A)(i) the highest posted price for December 31, 1979, for uncontrolled crude oil of the same grade, quality, and field, or

"(ii) if there is no posted price described in clause (i), the highest posted price for such date for uncontrolled crude oil at the nearest domestic field for which prices for oil of the same grade and quality were posted for such date, multiplied by

"(B) a fraction the denominator of which is $35, and the numerator of which is—

"(i) $15.20 for purposes of determining base prices for tier 2 oil, and

"(ii) $16.55 for purposes of determining base prices for tier 3 oil.

For purposes of the preceding sentence, no price which was posted after January 14, 1980, shall be taken into account.

"(3) MINIMUM INTERIM BASE PRICE.—The base price determined under paragraph (2) of tier 2 oil or tier 3 oil shall not be less than the sum of—

"(A) the ceiling price which would have applied to such oil under the March 1979 energy regulations if it had been produced and sold in May 1979 as upper tier oil, plus

"(B)(i) $1 in the case of tier 2 oil, or

"(ii) $2 in the case of tier 3 oil.

"SEC. 4990. PHASEOUT OF TAX.

"(a) PHASEOUT.—Notwithstanding any other provision of this chapter, the tax imposed by this chapter with respect to any crude oil removed from the premises during any month during the phaseout period shall not exceed—

"(1) the amount of tax which would have been imposed by this chapter with respect to such crude oil but for this subsection, multiplied by

"(2) the phaseout percentage for such month.

"(b) TERMINATION OF TAX.—Notwithstanding any other provision of this chapter, no tax shall be imposed by this chapter with respect to any crude oil removed from the premises after the phaseout period.

"(c) DEFINITIONS.—For purposes of this section—

"(1) PHASEOUT PERIOD.—The term 'phaseout period' means the 33-month period beginning with the month following the target month.

"(2) PHASEOUT PERCENTAGE.—The phaseout percentage for any month is 100 percent reduced by 3 percentage points for each month after the target month and before the month following the month for which the phaseout percentage is being determined.

"(3) TARGET MONTH.—The term 'target month' means the later of—

"(A) December 1987, or

"(B) the first month for which the Secretary publishes an estimate under subsection (d)(2).

In no event shall the target month be later than December 1990.

"(d) DETERMINATION OF AGGREGATE NET WINDFALL REVENUE.—

"(1) ESTIMATE BY THE SECRETARY.—For each month after 1986, the Secretary shall make an estimate of the aggregate net windfall revenue as of the close of such month. Any such estimate shall be made during the preceding month and shall be made on the basis of the best available data as of the date of making such estimate.

"(2) PUBLICATION.—If the Secretary estimates under paragraph (1) that the aggregate net windfall revenue as of the close of any month will exceed $227,300,000,000, the Secretary shall (not later than the last day of the preceding month) publish notice in the Federal Register that he has made such an estimate for such month.

"(3) AGGREGATE NET WINDFALL REVENUE DEFINED.—For purposes of this subsection, the term 'aggregate net windfall revenue' means the amount which the Secretary estimates to be the excess of—

"(A) the gross revenues from the tax imposed by section 4986 during the period beginning on March 1, 1980, and ending on the last day of the month for which the estimate is being made, over

"(B) the sum of—

"(i) the refunds of and other adjustments to such tax for such period, plus

"(ii) the decrease in the income taxes imposed by chapter 1 resulting from the tax imposed by section 4986.

For purposes of subparagraph (A), there shall not be taken into account any revenue attributable to an economic interest in crude oil held by the United States.

"Subchapter B—Categories of Oil

"Sec. 4994. Definitions and special rules relating to exemptions.

"SEC. 4991. TAXABLE CRUDE OIL; CATEGORIES OF OIL.

"(a) TAXABLE CRUDE OIL.—For purposes of this chapter, the term 'taxable crude oil' means all domestic crude oil other than exempt oil.

"(b) EXEMPT OIL.—For purposes of this chapter, the term 'exempt oil' means—

"(1) any crude oil from a qualified governmental interest or a qualified charitable interest.

"(2) any exempt Indian oil,

"(3) any exempt Alaskan oil, and

"(4) any exempt front-end oil.

"(c) TIER 1 OIL.—For purposes of this chapter, the term 'tier 1 oil' means any taxable crude oil other than—

"(1) tier 2 oil, and

"(2) tier 3 oil.

"(d) TIER 2 OIL.—For purposes of this chapter—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'tier 2 oil' means—

"(A) any oil which is from a stripper well property within the meaning of the June 1979 energy regulations, and

"(B) any oil from an economic interest in a National Petroleum Reserve held by the United States.

"(2) EXCLUSION OF CERTAIN OIL.—The term 'tier 2 oil' does not include tier 3 oil.

"(e) TIER 3 OIL.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'tier 3 oil' means—

"(A) newly discovered oil,

"(B) heavy oil, and

"(C) incremental tertiary oil.

"(2) NEWLY DISCOVERED OIL.—The term 'newly discovered oil' has the meaning given to such term by the June 1979 energy regulations.

"(3) HEAVY OIL.—The term 'heavy oil' means all crude oil which is produced from a property if crude oil produced and sold from such property during—

"(A) the last month before July 1979 in which crude oil was produced and sold from such property, or

"(B) the taxable period,

had a weighted average gravity of 16 degrees API or less (corrected to 60 degrees Fahrenheit).

"(4) INCREMENTAL TERTIARY OIL.—

"For definition of incremental tertiary oil, see section 4993.

"SEC. 4992. INDEPENDENT PRODUCER OIL.

"(a) GENERAL RULE.—For purposes of this chapter, the term 'independent producer oil' means that portion of an independent producer's qualified production for the quarter which does not exceed such person's independent producer amount for such quarter.

"(b) INDEPENDENT PRODUCER DEFINED.—For purposes of this section—

"(1) IN GENERAL.—The term 'independent producer' means, with respect to any quarter, any person other than a person whom subsection (c) of section 613A does not apply by reason of paragraph (2) (relating to certain retailers) or paragraph (4) (relating to certain refiners) of section 613A(d).

"(2) RULES FOR APPLYING PARAGRAPHS (2) AND (4) OF SECTION 613A(d).—For purposes of paragraph (1), paragraphs (2) and (4) of section 613A(d) shall be applied—

"(A) by substituting 'quarter' for 'taxable year' each place it appears in such paragraphs, and

"(B) by substituting '$1,250,000' for '$5,000,000' in paragraph (2) of section 613A(d).

"(c) INDEPENDENT PRODUCER AMOUNT.—For purposes of this section—

"(1) IN GENERAL.—A person's independent producer amount for any quarter is the product of—

"(A) 1,000 barrels, multiplied by

"(B) the number of days in such quarter (31 in the case of first quarter of 1980).

"(2) PRODUCTION EXCEEDS AMOUNT. If a person's qualified production for any quarter exceeds such person's independent producer amount for such quarter, the independent producer amount shall be allocated—

"(A) between tiers 1 and 2 in proportion to such person's production for such quarter of domestic crude oil in each such tier, and

"(B) within any tier, on the basis of the removal prices for such person's domestic crude oil in such tier removed during such quarter, beginning with the highest of such prices.

"(d) QUALIFIED PRODUCTION OF OIL DEFINED.—For purposes of this section—

"(1) IN GENERAL.—An independent producer's qualified production of oil for any quarter is the number of barrels of taxable crude oil—

"(A) of which such person is the producer,

"(B) which is removed during such quarter,

"(C) which is tier 1 oil or tier 2 oil, and

"(D) which is attributable to the independent producer's working interest in a property.

"(2) WORKING INTEREST DEFINED.—

"(A) IN GENERAL.—The term 'working interest' means an operating mineral interest (within the meaning of section 614(d))—

"(i) which was in existence as such an interest on January 1, 1980, or

"(ii) which is attributable to a qualified overriding royalty interest.

"(B) QUALIFIED OVERRIDING ROYALTY INTEREST.—For purposes of subparagraph (A)(ii), the term 'qualified overriding royalty interest' means an overriding royalty interest in existence as such an interest on January 1, 1980, but only if on February 20, 1980, there was in existence a binding contract under which such interest was to be converted into an operating mineral interest (within the meaning of section 614(d)).

"(3) PRODUCTION FROM TRANSFERRED PROPERTY.—

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, in the case of a transfer on or after January 1, 1980, of an interest in any property, the qualified production of the transferee shall not include any production attributable to such interest.

"(B) SMALL PRODUCER TRANSFER EXEMPTION.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply to any transfer of an interest in property if the transferee establishes (in such manner as may be prescribed by the Secretary by regulations) that at no time after December 31, 1979, has the property been held by a person who was a disqualified transferor for any quarter ending after September 30, 1979, and ending before the date such person transferred the interest.

"(ii) DISQUALIFIED TRANSFEROR.—The term 'disqualified transferor' means, with respect to any quarter, any person who—

"(I) had qualified production for such quarter which exceeded such person's independent producer amount for such quarter, or

"(II) was not an independent producer for such quarter.

"(iii) SPECIAL RULES.—For purposes of this paragraph—

"(I) PROPERTY HELD BY PARTNERSHIPS.—Property held by a partnership at any time shall be treated as owned proportionately by the partners of such partnership at such time.

"(II) PROPERTY HELD BY TRUST OR ESTATE.—Property held by any trust or estate shall be treated as owned both by such trust or estate and proportionately by its beneficiaries.

"(III) CONSTRUCTIVE APPLICATION.—This chapter shall be treated as having been in effect for periods after September 30, 1979, for purposes of making any determination under subclause (I) or (II) of clause (ii).

"(C) OTHER EXCEPTIONS.—Subparagraph (A) shall not apply in the case of—

"(i) a transfer of property at death,

"(ii) a change of beneficiaries of a trust which qualifies under clause (iii) of section 613A(c)(9)(B) (determined without regard to the exception at the end of such clause), and

"(iii) any transfer so long as the transferor and transferee are required by subsection (e) to share the 1,000 barrel amount contained in subsection (c)(1)(A).

The preceding sentence shall apply in the case of any property only if the production from the property was qualified production for the transferor.

"(D) TRANSFERS INCLUDE SUBLEASES, ETC.—For purposes of this paragraph—

"(i) a sublease shall be treated as a transfer, and

"(ii) an interest in a partnership or trust shall be treated as an interest in property held by the partnership or trust.

"(e) ALLOCATION WITHIN RELATED GROUP.—

"(1) IN GENERAL. In the case of persons who are members of the same related group at any time during any quarter, the 1,000 barrel amount contained in subsection (c)(1)(A) for days during such quarter shall be reduced for each such person by allocating such amount among all such persons in proportion to their respective qualified production for such quarter.

"(2) RELATED GROUP.—For purposes of this subsection, persons shall be treated as members of a related group if they are described in any of the following clauses:

"(A) a family,

"(B) a controlled group of corporations,

"(C) a group of entities under common control, or

"(D) if 50 percent or more of the beneficial interest in 1 or more corporations, trusts, or estates is owned by the same family, all such entities and such family.

"(3) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) CONROLLED GROUP OF CORPORATIONS.—The term 'controlled group of corporations' has the meaning given such term by section 613A(c)(8)(D)(i).

"(B) GROUP OF ENTITIES UNDER COMMON CONTROL.—The term 'group of entities under common control' means any group of corporations, trusts, or estates which (as determined under regulations pre-

scribed by the Secretary) are under common control. Such regulations shall be based on principles similar to the principles which apply under subparagraph (A).

"(C) FAMILY.—The term 'family' means an individual and the spouse and minor children of such individual.

"(D) CONSTRUCTIVE OWNERSHIP.—For purposes of paragraph (2)(D), an interest owned by or for a corporation, partnership, trust, or estate shall be considered as owned directly by the entity and proportionately by its shareholders, partners, or beneficiaries, as the case may be.

"(E) MEMBERS OF MORE THAN 1 RELATED GROUP.—If a person is a member of more than 1 related group during any quarter, the determination of such person's allocation under paragraph (1) shall be made by reference to the related group which results in the smallest allocation for such person.

"SEC. 4993. INCREMENTAL TERTIARY OIL.

"(a) IN GENERAL.—For purposes of this chapter, the term 'incremental tertiary oil' means the excess of—

"(1) the amount of crude oil which is removed from a property during any month and which is produced on or after the project beginning date and during the period for which a qualified tertiary recovery project is in effect on the property, over

"(2) the base level for such property for such month.

"(b) DETERMINATION OF AMOUNT.—For purposes of this section—

"(1) BASE LEVEL.—The base level for any property for any month is the average monthly amount (determined under rules similar to rules used in determining the base production control level under the June 1979 energy regulations) of crude oil removed from such property during the 6-month period ending March 31, 1979, reduced (but not below zero) by the sum of—

"(A) 1 percent of such amount for each month which begins after 1978 and before the first month which begins after 1978 and before the first month beginning after the project beginning date, and

"(B) 2½ percent of such amount for each month which begins after the project beginning date (or after 1978 if the project beginning date is before 1979) and before the month for which the base level is being determined.

"(2) MINIMUM AMOUNT IN CASE OF PROJECTS CERTIFIED BY DOE.—In the case of a project described in subsection (c)(1)(A), for the period during which the project is in effect, the amount of the incremental tertiary oil shall not be less than the incremental production determined under the June 1979 energy regulations.

"(3) ALLOCATION RULES.—The determination of which barrels of crude oil removed during any month are incremental tertiary oil shall be made—

"(A) first by allocating the amount of incremental tertiary oil between—

"(i) oil which (but for this subsection) would be tier 1 oil, and

(ii) oil which (but for this subsection) would be tier 2 oil,

in proportion to the respective amounts of each such oil removed from the property during such month, and

"(B) then by taking into account barrels of crude oil so removed in the order of their respective removal prices, beginning with the highest of such prices.

"(c) QUALIFIED TERTIARY RECOVERY PROJECT.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified tertiary recovery project' means—

"(A) a qualified tertiary enhanced recovery project with respect to which a certification as such has been approved and is in effect under the June 1979 energy regulations, or

"(B) any project for enhancing recovery of crude oil which meets the requirements of paragraph (2).

"(2) REQUIREMENTS.—A project meets the requirements of this paragraph if—

"(A) the project involves the application (in accordance with sound engineering principles) of 1 or more tertiary recovery methods which can reasonably be ex-

pected to result in more than an insignificant increase in the amount of crude oil which will ultimately be recovered,

"(B) the project beginning date is after May 1979,

"(C) the portion of the property to be affected by the project is adequately delineated,

"(D) the operator submits (at such time and in such manner as the Secretary may by regulations prescribe) to the Secretary—

"(i) a certification from a petroleum engineer that the project meets the requirements of subparagraphs (A), (B), and (C), or

"(ii) a certification that a jurisdictional agency (within the meaning of subsection (d)(5)) has approved the project as meeting the requirements of subparagraphs (A), (B), and (C), and that such approval is still in effect, and

"(E) the operator submits (at such time and such manner as the Secretary may by regulations prescribe) to the Secretary a certification from a petroleum engineer that the project continues to meet the requirements of subparagraphs (A), (B), and (C).

"(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) TERTIARY RECOVERY METHOD.—The term 'tertiary recovery method' means—

"(A) any method which is described in subparagraphs (1) through (9) of section 212.78(c) of the June 1979 energy regulations, or

"(B) any other method to provide tertiary enhanced recovery which is approved by the Secretary for purposes of this chapter.

"(2) PROJECT BEGINNING DATE.—The term 'project beginning date' means the later of—

"(A) the date on which the injection of liquids, gases, or other matter begins, or

"(B) the date on which—

"(i) in the case of a project described in subsection (c)(1)(A), the project is certified as a qualified terti-

ary enhanced recovery project under the June 1979 energy regulations, or

"(ii) in the case of a project described in subsection (c)(1)(B), a petroleum engineer certifies, or a jurisdictional agency approves, the project as meeting the requirements of subparagraphs (A), (B), and (C) of subsection (c)(2).

"(3) PROJECT ONLY AFFECTS PORTION OF PROPERTY.—If a qualified tertiary recovery project can reasonably be expected to increase the ultimate recovery of crude oil from only a portion of a property, such portion shall be treated as a separate property.

"(4) SIGNIFICANT EXPANSION TREATED AS SEPARATE PROJECT.—A significant expansion of any project shall be treated as a separate project.

"(5) JURISDICTIONAL AGENCY.—The term 'jurisdictional agency' means—

"(A) in the case of an application involving a tertiary recovery project on lands not under Federal jurisdiction—

"(i) the appropriate State agency in the State in which such lands are located which is designated by the Governor of such State in a written notification submitted to the Secretary as the agency which will approve projects under this subsection, or

"(ii) if the Governor of such State does not submit such written notification within 180 days after the date of the enactment of the Crude Oil Windfall Project Tax Act of 1980, the United States Geological Survey (until such time as the Governor submits such notification), or

"(B) in the case of an application involving a tertiary recovery project on lands under Federal jurisdiction, the United States Geological Survey.

"(6) BASIS OF REVIEW OF CERTAIN QUALIFIED TERTIARY RECOVERY PROJECTS.—In the case of any project which is approved under subsection (c)(2)(D)(ii) and for which a certification is submitted to the Secretary, the project shall be considered as meeting the requirements

of subparagraphs (A), (B), and (C) of subsection (c)(2) unless the Secretary determines that—

"(A) the approval of the jurisdictional agency was not supported by substantial evidence on the record upon which such approval was based, or

"(B) additional evidence not contained in the record upon which such approval was based demonstrates that such project does not meet the requirements of subparagraph (A), (B), or (C) of subsection (c)(2).

If the Secretary makes a determination described in subparagraph (A) or (B) of the preceding sentence, the determination of whether the project meets the requirements of subparagraphs (A), (B), and (C) of subsection (c)(2) shall be made without regard to the preceding sentence.

"(7) RULINGS RELATING TO CERTAIN QUALIFIED TERTIARY RECOVERY PROJECTS.—In the case of any tertiary recovery project for which a certification is submitted to the Secretary under subsection (c)(2)(D)(ii), a taxpayer may request a ruling from the Secretary with respect to whether such project is a qualified tertiary recovery project. The Secretary shall issue such ruling within 180 days of the date after he receives the request and such information as may be necessary to make a determination.

"SEC. 4994. DEFINITIONS AND SPECIAL RULES RELATING TO EXEMPTIONS.

"(a) QUALIFIED GOVERNMENTAL INTEREST.—For purposes of section 4991(b)—

"(1) IN GENERAL.—The term 'qualified governmental interest' means an economic interest in crude oil if—

"(A) such interest is held by a State or political subdivision thereof or by an agency or instrumentality of a State or political subdivision thereof, and

"(B) under the applicable State or local law, all of the net income received pursuant to such interest is dedicated to a public purpose.

"(2) NET INCOME.—For purposes of this paragraph, the term 'net income' means gross income reduced by

production costs, and severance taxes of general application, allocable to the interest.

"(3) AMOUNTS PLACED IN CERTAIN PERMANENT FUNDS TREATED AS DEDICATED TO PUBLIC PURPOSE.—The requirements of paragraph (1)(B) shall be treated as met with respect to any net income which, under the applicable State or local law, is placed in a permanent fund the earnings on which are dedicated to a public purpose.

"(b) QUALIFIED CHARITABLE INTEREST.—For purposes of section 4991(b)

"(1) IN GENERAL.—The term 'qualified charitable interest' means an economic interest in crude oil if—

"(A) such interest is—

"(i) held by an organization described in clause (ii), (iii), or (iv) of section 170(b)(1)(A) which is also described in section 170(c)(2), or

"(ii) held—

"(I) by an organization described in clause (i) of section 170(b)(1)(A) which is also described in section 170(c)(2), and

"(II) for the benefit of an organization described in clause (i) of this subparagraph, and

"(B) such interest was held by the organization described in clause (i) or subclause (I) of clause (ii) of subparagraph (A) on January 21, 1980, and at all times thereafter before the last day of the taxable period.

"(2) SPECIAL RULE.—For purposes of paragraph (1)(A)(ii), an interest shall be treated as held for the benefit of an organization described in paragraph (1)(A)(i) only if all the proceeds from such interest were dedicated on January 21, 1980, and at all times thereafter before the last day of the taxable period, to the organization described in paragraph (1)(A)(i).

"(c) FRONT-END TERTIARY OIL.—

"(1) EXEMPTION FOR TERTIARY PROJECTS OF INDEPENDENTS.—For purposes of this chapter, the term 'exempt front-end oil' means any domestic crude oil—

"(A) which is removed from the premises before October 1, 1981, and

"(B) which is treated as front-end oil by reason of a front-end tertiary project on one or more properties each of which is a qualified property.

"(2) REFUNDS FOR TERTIARY PROJECTS OF INTEGRATED PRODUCERS.—

"(A) IN GENERAL.—In the case of any front-end tertiary project which does not meet the requirements of paragraph (1)(B), the excess of—

"(i) the allowed expenses of the taxpayer with respect to such project, over

"(ii) the tertiary incentive revenue,

shall be treated as a payment by the taxpayer with respect to the tax imposed by this chapter made on September 30, 1981.

"(B) LIMITATION BASED ON AMOUNT OF TAX.—The amount of the payment determined under subparagraph (A) with respect to any producer shall not exceed the aggregate tax imposed by section 4986 with respect to front-end oil of that producer removed after February 1980 and before October 1981.

"(C) TERTIARY INCENTIVE REVENUE.—For purposes of this paragraph, the term 'tertiary incentive revenue' has the meaning given such term by the front-end tertiary provisions of the energy regulations.

"(3) DEFINITION OF ALLOWED EXPENSES; PREPAID EXPENSES NOT TAKEN INTO ACCOUNT.—For purposes of this subsection (including the application of the front-end tertiary provisions for purposes of this subsection)—

"(A) ALLOWED EXPENSES.—Except as provided in subparagraph (B), allowed expenses shall be determined under the front-end tertiary provisions of the energy regulations.

"(B) PREPAID EXPENSES NOT TAKEN INTO ACCOUNT.—The term 'allowed expenses' shall not include any amount attributable to periods after September 30, 1981.

"(C) PERIOD TO WHICH ITEM IS ATTRIBUTABLE.—For purposes of subparagraph (B)—

"(i) any injectant and any fuel shall be treated as attributable to periods before October 1, 1981, if the injectant is injected, or the fuel is used, before October 1, 1981, and

"(ii) any other item shall be treated as attributable to periods before October 1, 1981, only to the extent that under chapter 1 deductions for such item (including depreciation in respect of such items) are properly allocable to periods before October 1, 1981.

For purposes of the preceding sentence, an act shall be treated as taken before a date if it would have been taken before such date but for an act of God, a severe mechanical breakdown, or an injunction.

"(4) DEFINITIONS AND SPECIAL RULES.—For purposes of this subsection—

"(A) FRONT-END TERTIARY PROVISIONS.—The term 'front-end tertiary provisions' means—

"(i) the provisions of section 212.78 of the energy regulations which exempt crude oil from ceiling price limitations to provide financing for tertiary projects (as such provisions took effect on October 1, 1979), and

"(ii) any modification of such provisions, but only to the extent that such modification is for purposes of coordinating such provisions with the tax imposed by this chapter.

"(B) FRONT-END OIL.—The term 'front-end oil' means any domestic crude oil which is not subject to a first sale ceiling price under the energy regulations solely by reason of the front-end tertiary provisions of such regulations.

"(C) QUALIFIED PROPERTY.—The term 'qualified property' means any property if, on January 1, 1980, 50 percent or more of the operating mineral interest in such property is held by persons who were independent producers (within the meaning of section 4992(b)) for the last quarter of 1979.

"(D) FRONT-END TERTIARY PROJECT.—The term 'front-end tertiary project' means any project which qualifies under the front-end tertiary provisions of the energy regulations.

"(E) ORDERING RULE.—Front-end oil of any taxpayer shall be treated as attributable first to projects which meet the requirements of paragraph (1)(B).

"(d) EXEMPT INDIAN OIL.—For purposes of this chapter, the term 'exempt Indian oil' means any domestic crude oil—

"(1) the producer of which is an Indian tribe, an individual member of an Indian tribe, or an Indian tribal organization under an economic interest held by such a tribe, member, or organization on January 21, 1980, and which is produced from mineral interests which are—

"(A) held in trust by the United States for the tribe, member, or organization, or

"(B) held by the tribe, member, or organization subject to a restriction on alienation imposed by the United States because it is held by an Indian tribe, an individual member of an Indian tribe, or an Indian tribal organization,

"(2) the producer of which is a native corporation organized under the Alaska Native Claims Settlement Act (as in effect on January 21, 1980), and which—

"(A) is produced from mineral interests held by the corporation which were received under that Act, and

"(B) is removed from the premises before 1992, or

"(3) the proceeds from the sale of which are deposited in the Treasury of the United States to the credit of tribal or native trust funds pursuant to a provision of law in effect on January 21, 1980.

"(e) EXEMPT ALASKAN OIL.—For purposes of this chapter, the term 'exempt Alaskan oil' means any crude oil (other than Sadlerochit oil) which is produced—

"(1) from a reservoir from which oil has been produced in commercial quantities through a well located north of the Arctic Circle, or

"(2) from a well located on the northerly side of the divide of the Alaska-Aleutian Range and at least 75 miles from the nearest point on the Trans-Alaska Pipeline System.

"Subchapter C—Miscellaneous Provisions

"SEC. 4995. WITHHOLDING; DEPOSITARY REQUIREMENTS.

"(a) WITHHOLDING BY PURCHASER.—

"(1) WITHHOLDING REQUIRED.—Except to the extent provided in regulations prescribed by the Secretary—

"(A) the first purchaser of any domestic crude oil shall withhold a tax equal to the amount of the tax imposed by section 4986 with respect to such oil from amounts payable by such purchaser to the producer of such oil, and

"(B) the first purchaser of such oil shall be liable for the payment of the tax required to be withheld under subparagraph (A) and shall not be liable to any person for the amount of any such payment.

"(2) DETERMINATION OF AMOUNT TO BE WITHHELD.—

"(A) IN GENERAL.—The purchaser shall determine the amount to be withheld under paragraph (1)—

"(i) on the basis of the certification furnished to the purchaser under section 6050C, unless the purchaser has reason to believe that any information contained in such certification is not correct, or

"(ii) if clause (i) does not apply, under regulations prescribed by the Secretary.

"(B) NET INCOME LIMITATION NOT TO BE APPLIED.—For purposes of determining the amount to be withheld under paragraph (1), subsection (b) of section 4988 shall not apply.

"(3) ADJUSTMENTS FOR WITHHOLDING ERRORS.—

"(A) IN GENERAL.—To the extent provided in regulations prescribed by the Secretary, withholding er-

rors made by a purchaser with respect to the crude oil of a producer removed during any calendar year shall be corrected by that purchaser by making proper adjustments in the amounts withheld from subsequent payments to such producer for crude oil removed during the same calendar year.

"(B) WITHHOLDING ERROR.—For purposes of subparagraph (A), there is a withholding error if the amount withheld by the purchaser under paragraph (1) with respect to any payment for any crude oil exceeds (or is less than) the tax imposed by section 4986 with respect to such oil (determined without regard to section 4988(b)).

"(C) LIMITATION ON AMOUNT OF ADJUSTMENTS.—No adjustment shall be required under subparagraph (A) with respect to any payment for any crude oil to the extent that such adjustment would result in amounts withheld from such payment in excess of the windfall profit from such crude oil.

"(D) VOLUNTARY WITHHOLDING.—The Secretary may by regulations provide for withholding under this subsection of additional amounts from payments by any purchaser to any producer if the purchaser and producer agree to such withholding. For purposes of this title, any amount withheld pursuant to such an agreement shall be treated as an amount required to be withheld under paragraph (1).

"(4) PRODUCER TREATED AS HAVING PAID WITHHELD AMOUNT.—

"(A) IN GENERAL.—The producer of any domestic crude oil shall be treated as having paid any amount withheld with respect to such oil under this subsection.

"(B) TIME PAYMENT DEEMED MADE.—The producer shall be treated as having made any payment described in subparagraph (A) on the last day of the first February after the calendar year in which the oil is removed from the premises.

"(5) PRODUCER REQUIRED TO FILE RETURN ONLY TO EXTENT PROVIDED IN REGULATIONS.—Except to the ex-

tent provided in regulations, the producer of crude oil with respect to which withholding is required under paragraph (1) shall not be required to file a return of the tax imposed by section 4986 with respect to such oil.

"(6) PURCHASER'S QUARTERLY RETURNS TO CONTAIN SUMMARY.—The purchaser's return of tax under this chapter for any calendar quarter of any calendar year shall contain such information (with respect to such quarter and the prior quarters of such calendar year) as may be necessary to facilitate the coordination of the withholding of tax by such purchaser with respect to each producer with the determination of the tax imposed by section 4986 with respect to such producer.

"(7) ELECTION FOR PURCHASER AND OPERATOR TO HAVE OPERATOR TAKE PLACE OF PURCHASER.—

"(A) IN GENERAL.—If the purchaser of domestic crude oil and the operator of the property from which the crude oil was produced make a joint election under this paragraph with respect to such property (or portion thereof)—

"(i) the operator shall be substituted for the purchaser for purposes of applying this subsection and subsection (b) (and so much of subtitle F as relates to such subsections), and

"(ii) if the operator is not an integrated oil company, the operator shall be treated as having the same status as the purchaser for purposes of applying subsection (b) with respect to amounts withheld by the operator by reason of such election.

"(B) REGULATIONS MAY LIMIT ELECTION.—The Secretary may by regulations limit the circumstances under which an election under this paragraph may be made to situations where substituting the operator for the purchaser is administratively more practicable.

"(8) NO ASSESSMENTS OR REFUNDS BEFORE CLOSE OF THE YEAR.—Except to the extent provided in regulations prescribed by the Secretary, in the case of any oil subject to withholding under this subsection—

"(A) no notice of any deficiency with respect to the tax imposed by section 4986 may be mailed under section 6212, and

"(B) no proceeding in any court for the refund of the tax imposed by section 4986 may be begun,

before the last day of the first February after the calendar year in which such oil was removed from the premises.

"(b) DEPOSITARY REQUIREMENTS.—

"(1) INTEGRATED OIL COMPANIES.—In the case of an integrated oil company, deposit of the estimated amount of—

"(A) withholding under subsection (a) by such company, and

"(B) such company's liability for the tax imposed by section 4986 with respect to oil for which withholding is not required,

shall be made twice a month.

"(2) PERSONS WHO ARE NOT INTEGRATED OIL COMPANIES.—In the case of a person, other than an integrated oil company—

"(A) DEPOSITS OF WITHHELD AMOUNTS.—Deposit of the amounts required to be withheld under subsection (a) shall be made not later than—

"(i) except as provided in clause (ii), 45 days after the close of the month in which the oil was removed, or

"(ii) in the case of oil purchased under a contract therefor by an independent refiner under which no payment is required to be made before the 46th day after the close of the month in which the oil is purchased, before the first day of the 3rd month which begins after the close of the month in which such oil was removed.

"(B) ESTIMATED SECTION 4986 TAX.—Deposits of the estimated amount of such person's liability for the tax imposed by section 4986 with respect to oil for which withholding is not required shall be made not later than 45 days after the close of the month in which the oil was removed from the premises.

"(3) INTEGRATED OIL COMPANY DEFINED.—For purposes of this subsection, the term 'integrated oil company' means a taxpayer described in paragraph (2) or (4) of section 613A(d) who is not an independent refiner.

"(4) INDEPENDENT REFINER.—For purposes of this subsection, the term 'independent refiner' has the same meaning as in paragraph (3) of section 3 of the Emergency Petroleum Allocation Act of 1973 (as in effect on January 1, 1980), except that 'the preceding calendar quarter's shall be substituted for 'November 27, 1973' in applying such paragraph for purposes of this paragraph.

"(c) CROSS REFERENCE.—

"For provision authorizing the Secretary to establish by regulations the mode and time for collecting the tax imposed by section 4986 (to the extent not otherwise provided in this chapter), see section 6302(a).

"SEC. 4996. OTHER DEFINITIONS AND SPECIAL RULES.

"(a) PRODUCER AND OPERATOR.—For purposes of this chapter—

"(1) PRODUCER.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'producer' means the holder of the economic interest with respect to the crude oil.

"(B) PARTNERSHIPS.—

"(i) IN GENERAL.—If (but for this subparagraph) a partnership would be treated as the producer of any crude oil—

"(I) such crude oil shall be allocated among the partners of such partnership, and

"(II) any partner to whom such crude oil is allocated (and not the partnership) shall be treated as the producer of such crude oil.

"(ii) ALLOCATION.—Except to the extent otherwise provided in regulations, any allocation under clause (i)(I) shall be determined on the basis of a person's proportionate share of the income of the partnership.

"(2) OPERATOR.—

"(A) In general.—Except as provided in subparagraph (b), the term 'operator' means the person primarily responsible for the management and operation of crude oil production on a property.

"(B) Designation of other person.—Under regulations prescribed by the Secretary, the term 'operator' means the person (or persons) designated with respect to a property (or portion thereof) as the operator for purposes of this chapter by persons holding operating mineral interests in the property.

"(b) Other Definitions.—For purposes of this chapter—

"(1) Crude oil.—The term 'crude oil' has the meaning given to such term by the June 1979 energy regulations.

"(2) Barrel.—The term 'barrel' means 42 United States gallons.

"(3) Domestic.—The term 'domestic', when used with respect to crude oil, means crude oil produced from an oil well located in the United States or in a possession of the United States.

"(4) United States.—The term 'United States' has the meaning given to such term by paragraph (1) of section 638 (relating to Continental Shelf areas).

"(5) Possession of the united states.—The term 'possession of the United States' has the meaning given to such term by paragraph (2) of section 638.

"(6) Indian tribe.—The term 'Indian tribe' has the meaning given to such term by section 106(b)(2)(C)(ii) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3316(b)(2)(C)(ii)).

"(7) Taxable period.—The term 'taxable period' means—

"(A) March 1980, and

"(B) each calendar quarter beginning after March 1980.

"(8) Energy regulations.—

"(A) In general.—The term 'energy regulations' means regulations prescribed under section 4(a) of the Emergency Petroleum Allocation Act of 1973 (15 U.S.C. 753(a)).

"(B) MARCH 1979 ENERGY REGULATIONS.—The March 1979 energy regulations shall be the terms of the energy regulations as such terms existed on March 1, 1979.

"(C) JUNE 1979 ENERGY REGULATIONS.—The June 1979 energy regulations—

"(i) shall be the terms of the energy regulations as such terms existed on June 1, 1979, and

"(ii) shall be treated as including final action taken pursuant thereto before June 1, 1979, and as including action taken before, on, or after such date with respect to incremental production from qualified tertiary enhanced recovery projects.

"(D) CONTINUED APPLICATION OF REGULATIONS AFTER DECONTROL.—Energy regulations shall be treated as continuing in effect without regard to decontrol of oil prices or any other termination of the application of such regulations.

"(c) SEVERANCE TAX ADJUSTMENT.—For purposes of this chapter—

"(1) IN GENERAL.—The severance tax adjustment with respect to any barrel of crude oil shall be the amount by which

"(A) any severance tax imposed with respect to such barrel, exceeds

"(B) the severance tax which would have been imposed if the barrel had been valued at its adjusted base price.

"(2) SEVERANCE TAX DEFINED. For purposes of this subsection, the term 'severance tax' means a tax—

"(A) imposed by a State with respect to the extraction of oil, and

"(B) determined on the basis of the gross value of the extracted oil.

"(3) LIMITATIONS.—

"(A) 15 PERCENT LIMITATION.—A severance tax shall not be taken into account to the extent that the rate thereof exceeds 15 percent.

"(B) INCREASES AFTER MARCH 31, 1979, MUST APPLY EQUALLY.—The amount of the severance tax taken into

account under paragraph (1) shall not exceed the amount which would have been imposed under a State severance tax in effect on March 31, 1979, unless such excess is attributable to an increase in the rate of the severance tax (or to the imposition of a severance tax) which applies equally to all portions of the gross value of each barrel of oil subject to such tax.

"(d) ALASKAN OIL FROM SADLEROCHIT RESERVOIR.—For purposes of this chapter—

"(1) IN GENERAL.—In the case of Sadlerochit oil—

"(A) ADJUSTED BASE PRICE INCREASED BY TAPS ADJUSTMENT.—The adjusted base price for any calendar quarter (determined without regard to this subsection) shall be increased by the TAPS adjustment (if any) for such quarter provided by paragraph (2).

"(B) REMOVAL PRICE DETERMINED ON MONTHLY BASIS.—The removal price of such oil removed during any calendar month shall be the average of the producer's removal prices for such month.

"(2) TAPS ADJUSTMENT.—

"(A) IN GENERAL.—The TAPS adjustment for any calendar quarter is the excess (if any) of

"(i) $6.26 over

"(ii) the TAPS tariff for the preceding calendar quarter.

"(B) TAPS TARIFF.—For purposes of subparagraph (A), the TAPS tariff for the preceding calendar quarter is the average per barrel amount paid for all transportation (ending in such quarter) of crude oil through the TAPS.

"(C) TAPS DEFINED.—For purposes of this paragraph, the term 'TAPS' means the Trans-Alaska Pipeline System.

"(3) SADLEROCHIT OIL DEFINED.—The term 'Sadlerochit oil' means crude oil produced from the Sadlerochit reservoir in the Prudhoe Bay oilfield.

"(e) SPECIAL RULES FOR POST-1978 TRANSFERS OF PROPERTY.—In the case of a transfer after 1978 of any portion of a property, for purposes of this chapter (including the application of the June 1979 energy regulations for purposes

of this chapter), after such transfer crude oil produced from any portion of such property shall not constitute oil from a stripper well property, newly discovered oil, or heavy oil, if such oil would not be so classified if the property had not been transferred.

"(f) ADJUSTMENT OF REMOVAL PRICE.—In determining the removal price of oil from a property in the case of any transaction, the Secretary may adjust the removal price to reflect clearly the fair market value of oil removed.

"(g) NO EXEMPTIONS FROM TAX.—No taxable crude oil, and no producer of such crude oil, shall be exempt from the tax imposed by this chapter except to the extent provided in this chapter or in any provision of law enacted after the date of the enactment of this chapter which grants a specific exemption, by reference to this chapter, from the tax imposed by this chapter.

"(h) CROSS REFERENCE.—

"For the holder of the economic interests in the case of a production payment, see section 636.

"SEC. 4997. RECORDS AND INFORMATION; REGULATIONS.

"(a) RECORDS AND INFORMATION.—Each taxpayer liable for tax under section 4986, each partnership, trust, or estate producing domestic crude oil, each purchaser of domestic crude oil, and each operator of a well from which domestic crude oil was produced, shall keep such records, make such returns, and furnish such information (to the Secretary and to other persons having an interest in the oil) with respect to such oil as the Secretary may by regulations prescribe.

"(b) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter, including such changes in the application of the energy regulations for purposes of this chapter as may be necessary or appropriate to carry out such purposes.

"SEC. 4998. CROSS REFERENCES.

"(1) For additions to the tax and additional amount for failure to file tax return or to pay tax, see section 6651.

"(2) For additions to the tax and additional amounts for failure to file certain information returns, registration statements, etc., see section 6652.

"(3) For additions to the tax and additional amounts for negligence and fraud, see section 6653.

"(4) For additions to the tax and additional amounts for failure to make deposit of taxes, see section 6656.

"(5) For additions to the tax and additional amounts for failure to collect and pay over tax, or attempt to evade or defeat tax, see section 6672.

"(6) For criminal penalties for attempt to evade or defeat tax, willful failure to collect or pay over tax, willful failure to file return, supply information, or pay tax, and for fraud and false statements, see sections 7201, 7202, 7203, and 7206.

"(7) For criminal penalties for failure to furnish certain information regarding windfall profit tax on domestic crude oil, see section 7241."

(2) CLERICAL AMENDMENT.—The table of chapters for subtitle D is amended by adding at the end thereof the following new item:

"CHAPTER 45. Windfall profit tax on domestic crude oil."

(b) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—The first sentence of section 164(a) (relating to deduction for taxes) is amended by inserting after paragraph (4) the following new paragraph:

"(5) The windfall profit tax imposed by section 4986."

(c) TIME FOR FILING RETURN OF WINDFALL PROFIT TAX; DEPOSITARY REQUIREMENTS—

(1) TIME FOR FILING RETURN OF WINDFALL PROFIT TAX.—

(A) Part V of subchapter A of chapter 61 (relating to time for filing returns and other documents) is amended by adding at the end thereof the following new section:

"SEC. 6076. TIME FOR FILING RETURN OF WINDFALL PROFIT TAX.

"(a) GENERAL RULE.—Except in the case of a return required by regulations prescribed under section 4995(a)(5), each return—

"(1) of the tax imposed by section 4986 (relating to windfall profit tax) for any taxable period (within the meaning of section 4996(b)(7), or

(2) by a person required under section 4995(a) to withhold the windfall profit tax for any taxable period,

shall be filed not later than the last day of the second month following the close of the taxable period.

"(b) CROSS REFERENCE.—

"For depositary requirements applicable to the tax imposed by section 4986, see section 4995(b)."

(B) The table of sections for such part V is amended by adding at the end thereof the following new item:

"Sec. 6076. Time for filing return of windfall profit tax."

(2) CROSS REFERENCE.—Subsection (d) of section 6302 is amended to read as follows:

"(d) CROSS REFERENCES.—

"(1) For treatment of earned income advance amounts as payment of withholding and FICA taxes, see section 3507(d).

"(2) For depositary requirements applicable to the windfall profit tax imposed by section 4986, see section 4995(b)."

(3) TECHNICAL AMENDMENT.—Section 7512 (relating to separate accounting for certain collected taxes, etc.) is amended—

(A) by striking out "or by chapter 33" in subsection (a) and (b) and inserting in lieu thereof ", by chapter 33, or by section 4986", and

(B) by striking out "or chapter 33" in subsections (b) and (c) and inserting in lieu thereof ", chapter 33, or section 4986".

(d) CERTAIN INFORMATION REQUIRED TO BE FURNISHED.—

(1) GENERAL RULE.—Subpart B of part III of subchapter A of chapter 61 (relating to information concern-

ing transactions with other persons) is amended by adding at the end thereof the following new section:

"SEC. 6060C. INFORMATION REGARDING WINDFALL PROFIT TAX ON DOMESTIC CRUDE OIL.

"(a) CERTIFICATION FURNISHED BY OPERATOR.—Under regulations prescribed by the Secretary, the operator of a property from which domestic crude oil was produced shall certify (at such time and in such manner as the Secretary shall by regulations prescribe) to the purchaser—

"(1) the adjusted base price (within the meaning of section 4989) with respect to such crude oil,

"(2) the tier and category of such crude oil for purposes of the tax imposed by section 4986,

"(3) if any certification is furnished to the operator by the producer with respect to whether such oil is exempt oil or independent producer oil, a copy of such certification,

"(4) the amount of such crude oil, and

"(5) such other information as the Secretary by regulations may require.

"(B) AGREEMENT BETWEEN OPERATOR AND PURCHASER.—The Secretary may by regulations provide that, if the operator and purchaser agree thereto, the operator shall be relieved of the duty of furnishing some or all of the information required under subsection (a).

"(c) SPECIAL RULE FOR OIL NOT SUBJECT TO WITHHOLDING.—If the tax imposed by section 4986 with respect to any oil for which witholding is not required under section 4995(a)—

"(1) subsections (a) and (b) shall be applied by substituting 'producer' for 'purchaser', and

"(2) paragraph (3) of subsection (a) shall not apply.

"(d) CROSS REFERENCES.—

"(1) For additions to tax for failure to furnish information required under this section, see section 6652(b).

"(2) For penalty for willful failure to supply information required under this section, see section 7241."

"(2) FOR PENALTY FOR WILLFUL FAILURE TO SUPPLY INFORMATION REQUIRED UNDER THIS SECTION, SEE SECTION 7241."

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Section 6652(b) is amended—

(i) by striking out "or section 6050A" and inserting in lieu thereof the following: ", section 6050A", and

(ii) by inserting ", or section 6050C (relating to information regarding windfall profit tax on crude oil)" after "fishing boat operators)".

(B) The table of sections for subpart B of part III of subchapter A of chapter 61 is amended by adding at the end thereof the following new item:

"Sec. 6060C. Information regarding windfall profit tax on domestic crude oil."

(e) CRIMINAL PENALTY FOR FAILURE TO FURNISH CERTAIN INFORMATION.—

(1) IN GENERAL.—Part II of subchapter A of chapter 75 (relating to penalties applicable to certain taxes) is amended by adding at the end thereof the following new section:

"SEC. 7241. WILLFUL FAILURE TO FURNISH CERTAIN INFORMATION REGARDING WINDFALL PROFIT TAX ON DOMESTIC CRUDE OIL.

"Any person who is required under section 6050C (or regulations thereunder) to furnish any information or certification to any other person and who willfully fails to furnish such information or certification at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution."

(2) CLERICAL AMENDMENT.—The table of sections for such part II is amended by adding at the end thereof the following new item:

"Sec. 7241. Willful failure to furnish certain information regarding windfall profit tax on domestic crude oil."

(f) DEFICIENCY PROCEDURES.—

(1) The following provisions are each amended by striking out "or 44" each place it appears and inserting in lieu thereof "44, or 45":

(A) section 6211(a),

(B) section 6211(b)(2),

(C) section 6212(a),

(D) section 6213(a),

(E) section 6213(f),

(F) section 6214(c),

(G) section 6214(d),

(H) section 6161(b)(1)

(I) section 6344(a)(1), and

(J) section 7422(e).

(2) Subsection (a) of section 6211 is amended by striking out "and 44" and inserting in lieu thereof "44, and 45".

(3) Subsection (b) of section 6211 is amended by adding at the end thereof the following new paragraphs:

"(5) The amount withheld under section 4995(a) from amounts payable to any producer for crude oil removed during any taxable period (as defined in section 4996(b)(7)) which is not otherwise shown on a return by such producer shall be treated as tax shown by the producer on a return for the taxable period.

"(6) Any liability to pay amounts required to be withheld under section 4995(a) shall not be treated as a tax imposed by chapter 45.

(4) Paragraph (1) of section 6212(b) is amended—

(A) by striking out "or chapter 44" and inserting in lieu thereof "chapter 44, or chapter 45.",

(B) by striking out "chapter 44, and this chapter" and inserting in lieu thereof "chapter 44, chapter 45, and this chapter", and

(C) by striking out "TAXES IMPOSED BY CHAPTER 42" in the paragraph heading and inserting in lieu thereof "CERTAIN EXCISE TAXES".

(5) Paragraph (1) of section 6212(c) is amended—

(A) by striking out "or chapter 42 tax" and inserting in lieu thereof "of chapter 42 tax", and

(B) by inserting ", or of chapter 45 tax for the same taxable period" after "to which such petition relates".

(6)(A) Subsection (a) of section 6512 is amended—

(i) by striking out "chapter 41, 42, 43, 44 taxes" and inserting in lieu thereof "certain excise taxes",

(ii) by striking out "or of tax imposed by chapter 41" and inserting in lieu thereof "of tax imposed by chapter 41," and

(iii) by inserting ", or of tax imposed by chapter 45 for the same taxable period" after "to which such petition relates".

(B) Paragraph (1) of section 6512(b) is amended—

(i) by striking out "or of tax imposed by chapter 41" and inserting in lieu thereof "of tax imposed by chapter 41", and

(ii) by inserting ", or of tax imposed by chapter 45 for the same taxable period" after "to which such petition relates".

(7) The subsection heading for subsection (c) of section 6601 is amended by striking out "CHAPTER 41, 42, 43, or 44 TAX" and inserting in lieu thereof "CERTAIN EXCISE TAX".

(8) Subsection (a) of section 6653 is amended—

(A) by striking out "or by chapter 12" and inserting in lieu thereof ", by chapter 12",

(B) by striking out "is due" and inserting in lieu thereof ", or by chapter 45 (relating to windfall profit tax) is due", and

(C) by striking out "OR GIFT" in the subsection heading and inserting in lieu thereof ", GIFT, OR WINDFALL PROFIT".

(9) Subsection (a) of section 6862 is amended by striking out "certain excise taxes" and inserting in lieu thereof "the excise taxes imposed by chapters 41, 42, 43, 44, and 45."

(g) SPECIAL RULES FOR STATUTE OF LIMITATIONS.—

(1) Assessment.—Section 6501 (relating to limitations on assessment and collection) is amended by adding at the end thereof the following new subsection:

"(q) Special Rules for Windfall Profit Tax.—

"(1) Oil subject to withholding.—

"(A) In general.—In the case of any oil to which section 4995(a) applies and with respect to which no return is required, the return referred to in this section shall be the return (of the person liable for the tax imposed by section 4986) of the taxes imposed by subtitle A for the taxable year in which the removal year ends.

"(B) Removal year.—For purposes of subparagraph (A), the term 'removal year' means the calendar year in which the oil is removed from the premises.

"(2) Extension of liability attributable to DOE reclassification.—

"(A) In general.—In the case of the tax imposed by chapter 45, if a Department of Energy change becomes final, the period for assessing any deficiency attributable to such change shall not expire before the date which is 1 year after the date on which such change becomes final.

"(B) Department of energy change.—For purposes of subparagraph (A) and section 6511(h)(2), the term 'Department of Energy change' means any change by the Department of Energy in the classification under the June 1979 energy regulations (as defined in section 4996(b)(8)(C)) of a property or of domestic crude oil from a property.

"(3) Partnership items of federally registered partnerships.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (o) shall apply to the tax imposed by section 4986."

(2) Refund.—Section 6511 (relating to limitations on credit or refund) is amended by redesignating subsection (h) as (i) and by inserting after subsection (g) the following new subsection:

"(h) Special Rules for Windfall Profit Taxes.—

"(1) OIL SUBJECT TO WITHHOLDING.—In the case of any oil to which section 4995(a) applies and with respect to which no return is required, the return referred to in subsection (a) shall be the return (of the person liable for the tax imposed by section 4986) of the taxes imposed by subtitle A for the taxable year in which the removal year (as defined in section 6501(q)(1)(B)) ends.

"(2) SPECIAL RULE FOR DOE RECLASSIFICATION.—In the case of any tax imposed by chapter 45, if a Department of Energy change (as defined in section 6501 (q)(2)(B)) becomes final, the period for filing a claim for credit or refund for any overpayment attributable to such change shall not expire before the date which is 1 year after the date on which such change becomes final.

"(3) PARTNERSHIP ITEMS OF FEDERALLY REGISTERED PARTNERSHIPS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (g) shall apply to the tax imposed by section 4986."

(h) INTEREST ON OVERPAYMENTS.—Section 6611 (relating to interest on overpayment) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

"(h) SPECIAL RULE FOR WINDFALL PROFIT TAX.—

"(1) IN GENERAL.—If any overpayment of tax imposed by section 4986 is refunded within 45 days after—

"(A) the last date (determined without regard to any extension of time for filing the return) prescribed for filing the return of the tax imposed by section 4986 for the taxable period with respect to which the overpayment was made, or

(B) if such return is filed after such last date, the date on which the return is filed,

no interest shall be allowed under subsection (a) on such overpayment.

"(2) SPECIAL RULE WHERE NO RETURN IS REQUIRED.—In the case of any oil for which no return of the tax imposed by section 4986 is required, the return referred to in paragraph (1) shall be the return of the tax imposed by subtitle A for the taxable year of the producer in

which the removal year (with respect to which the overpayment was made) ends. For purposes of the preceding sentence, the term 'removal year' means the calendar year in which the oil is removed from the premises."

(i) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply to periods after February 29, 1980.

(2) TRANSITIONAL RULES.—For the period ending June 30, 1980, the Secretary of the Treasury or his delegate shall prescribe rules relating to the administration of chapter 45 of the Internal Revenue Code of 1954. To the extent provided in such rules, such rules shall supplement or supplant for such period the administrative provisions contained in chapter 45 of such Code (or in so much of subtitle F of such Code as relates to such chapter 45).

SEC. 102. ALLOCATION OF NET REVENUES FROM WINDFALL PROFIT TAX TO CERTAIN USES.

(a) SEPARATE ACCOUNT IN TREASURY ESTABLISHED.—The net revenues from the windfall profit tax for each fiscal year beginning after September 30, 1980, and before October 1, 1990, are hereby allocated for accounting purposes to a separate account in the Treasury to be known as the Windfall Profit Tax Account (hereinafter in this section referred to as the "Account").

(b) SPECIFIED USES FOR AMOUNTS IN THE ACCOUNT.—

(1) BASIC NET REVENUES.—In the case of the amount of basic net revenues allocated to the Account for any fiscal year, there shall be a further allocation to subaccounts for the following uses:

Use for	Percent
Income tax reductions	60
Low-income assistance	25
Energy and transportation programs	15

(2) ADDITIONAL NET REVENUES.—In the case of the amount of additional net revenues allocated to the Account for any fiscal year, there shall be a further allocation to subaccounts for the following uses:

Use for	Percent
Income tax reductions	66⅔
Low-income assistance	33⅓

(3) SPECIAL RULE FOR LOW-INCOME ASSISTANCE FOR 1982 AND SUBSEQUENT YEARS.—In the case of any amount allocated under paragraph (1) to the subaccount for low-income assistance for the fiscal year beginning October 1, 1981, or any subsequent fiscal year—

(A) 50 percent shall be allocated to a program to assist AFDC and SSI recipients under the Social Security Act, and

(B) 50 percent shall be allocated to a program of emergency energy assistance.

(c) NET REVENUES DEFINED.—For purposes of this section—

(1) IN GENERAL.—The term "net revenues of the windfall profit tax" means, for any fiscal year, the amount which the Secretary estimates to be the excess of—

(A) the gross revenues from the tax imposed by section 4986 for the fiscal year, over

(B) the sum of—

(i) the refunds of and other adjustments to such tax for such fiscal year, plus

(ii) the decrease in the income taxes impoed by chapter 1 resulting from the tax impsoed by section 4986.

For purposes of subparagraph (A), there shall not be taken into account any revenue attributable to an economic interest in crude oil held by the United States.

(2) BASIC NET REVENUES.—The term "basic net revenues" means the estimated net revenues which would result for any period under the assumptions for such period which were made in enacting the Crude Oil Windfall Profit Tax At of 1980.

(3) ADDITIONAL NET REVENUES.—The term "additional net revenues" means for any period the net revenues in excess of the basic net revenues for such period.

(d) PRESIDENT TO PROPOSE ALLOCATION OF NET REVENUES.—

(1) IN GENERAL.—The President shall propose for each fiscal year to which this section applies an allocation of the net revenues among the uses set forth in subsection (b).

(2) TIME AND MANNER FOR PROPOSING.—Except for the fiscal year beginning October 1, 1980, the proposal for each fiscal year shall be contained in the annual budget for such fiscal year. The proposal for the fiscal year beginning October 1, 1980, shall be submitted by the President within 90 days after the date of the enactment of this Act.

(e) REPORTS.—The Secretary of the Treasury shall report to the Congress not later than January 1 of 1982 and of each calendar year thereafter before 1992—

(1) the net revenues derived from the windfall profit tax for the fiscal year ending on September 30 of the preceding year, and

(2) the actual disposition for such fiscal year of such revenues among the uses specified in subsetion (b).

SEC. 103. STUDY OF EFFECTS OF DECONTROL OF OIL PRICES AND OF WINDFALL PROFIT TAX.

(a) GENERAL RULE.—The President shall, not later than January 1, 1983, submit to the Congress a report on the effect of decontrol of oil prices and the windfall profitt tax on—

(1) domestic oil production,

(2) foreign oil imports,

(3) profits of the oil industry,

(4) inflation,

(5) employment,

(6) economic growth,

(7) Federal revenues, and

(8) national security.

(b) REPORT TO INCLUDE RECOMMENDATIONS.—The report required under subsection (a) shall include such legislation recommendations as the President determines to be advisable.

Internal Revenue Code of 1954 (26 U.S.C.):

SEC. 7852. OTHER APPLICABLE RULES.

(a) *Separability Clause.*—If any provision of this title, or the application thereof to any person or circumstances, is held invalid, the remainder of the title, and the application of such provision to other persons or circumstances, shall not be affected thereby.